

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JANE DOE, <i>et al.</i> ,	x	
	:	
	:	
Plaintiffs,	:	
v.	:	Civil Action No. 05-120-JJF
	:	
INDIAN RIVER SCHOOL DISTRICT, <i>et al.</i> ,	:	FILED UNDER SEAL
	:	
	:	
Defendants.	x	

**EXHIBITS TO
OPENING BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT ON THE CONSTITUTIONALITY OF THE
INDIAN RIVER SCHOOL BOARD'S PRAYER POLICY
AS WRITTEN AND AS APPLIED**

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DATED: April 10, 2008

EXHIBIT 1

<p>1 IN THE UNITED STATES DISTRICT COURT 2 IN AND FOR THE DISTRICT OF DELAWARE 3 4 MONA DOBRICH and MARCO DOBRICH, individually and 5 As parents and next friend of ALEXANDER DOBRICH, 6 SAMANTHA DOBRICH, JANE DOE and JOHN DOE, 7 individually and as parents and next friend of 8 JORDAN DOE and JAMIE DOE, 9 Plaintiffs 10 vs. CIVIL ACTION 11 NO. 15-120 12 INDIAN RIVER SCHOOL DISTRICT, ET AL., 13 Defendants 14 15 DEPOSITION OF CHARLES M. BIRELEY, taken 16 pursuant to notice at the Indian River School 17 District, 31 Hosier Street, Selbyville, Delaware, 18 beginning at 9:15 a.m. on October 11, 2006 before 19 David A. Sroka, Registered Professional Reporter and 20 Notary Public. 21 APPEARANCES: 22 23 THOMAS ALLINGHAM, ESQUIRE 24 RICHARD HORVATH, ESQUIRE BRIAN LENHARD, ESQUIRE P.O. Box 636 Wilmington, Delaware 19899-0636 For the Plaintiffs WILCOX & FETZER 1330 King Street - Wilmington, DE 19801 (302) 655-0477 www.wilfet.com</p>	<p>1 MS. DUPHILY: This is the 2 videotape deposition of Mr. Charles 3 Bireley, taken by the Plaintiffs in the 4 matter of Dobrich, et.al, versus Indian 5 River School District, et.al, case 6 number is 15-120. 7 The deposition is being held at 31 8 Hosier Boulevard, Selbyville, Delaware. We 9 are going on the record on October 11, 2006 10 at approximately 9:15 a.m.. The court 11 reporter is Dave Sroka from the firm of 12 Wilcox & Fetzer. I am Lindsay duPhily, 13 videotape specialist from Discovery Video 14 Services. 15 Now, the counsel will introduce 16 themselves and then the court reporter will 17 swear in the witness. 18 MR. ALLINGHAM: Tom Allingham 19 representing the Plaintiffs and with me is 20 Rick Horvath and Brian Lenhard. 21 MR. GOSSELIN: Jason Gosselin 22 representing the Indian River School 23 District, the school board and the other 24 defendants.</p>
<p>1 2 3 4 JASON P. GOSSELIN, ESQUIRE 5 Drinker Biddle & Reath LLP 6 Philadelphia, Pennsylvania 19103-6996 7 For the Defendants 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	<p>1 CHARLES BIRELEY, 2 The Witness herein, called for examination by 3 the Plaintiffs, having been duly sworn to tell the 4 truth, the whole truth, and nothing but the truth, 5 was examined and testified as follows: 6 examination by him to. 7 EXAMINATION BY MR. ALLINGHAM: 8 Q. Good morning, Mr. Bireley, my name is Tom 9 Allingham, I represent the Plaintiffs. I'm going to 10 ask you questions today that are relevant in our 11 view to the School Board prayer issue in this 12 litigation. 13 We have, as your lawyer has probably told 14 you separated, or the judge has asked us to separate 15 the School Board prior issue from the several other 16 issues in the case, and so the deposition today will 17 be focused on the School Board prayer issue. 18 A couple pieces of introduction. I'm going 19 to refer to the final board policy on School Board 20 prayer, a copy of which I'll give you later and we 21 will talk about it, as the School Board Prayer 22 Policy. Do you understand what I mean when I say 23 that? 24 A. Yes.</p>

<p>13</p> <p>1 A. Yeah.</p> <p>2 Q. Do you know whether students are entitled</p> <p>3 tight to speak to the Board directly in connection</p> <p>4 with disciplinary actions against them?</p> <p>5 A. Are they entitled to?</p> <p>6 Q. Yes?</p> <p>7 A. There's a process for that.</p> <p>8 Q. Which permits them to speak directly to the</p> <p>9 Board?</p> <p>10 A. Yes.</p> <p>11 Q. Are you aware of instances in which a</p> <p>12 student has spoken directly to the Board?</p> <p>13 A. Yes.</p> <p>14 Q. Can you estimate for me over the course of</p> <p>15 your 30 years how frequently that's occurred?</p> <p>16 A. Very few.</p> <p>17 Q. The Schools Board's responsibilities</p> <p>18 include adopting the district's annual budget, is</p> <p>19 that correct?</p> <p>20 A. Yes.</p> <p>21 Q. I asked you about hiring teachers, is the</p> <p>22 School Board also responsible for firing teachers?</p> <p>23 A. Yes.</p> <p>24 Q. And also firing district employees?</p>	<p>15</p> <p>1 safety of the trips that are being proposed?</p> <p>2 A. Yes.</p> <p>3 Q. So, the welfare of the students is one</p> <p>4 aspect of the responsibility of the School Board?</p> <p>5 A. Yes.</p> <p>6 Q. At its meetings is it correct that the</p> <p>7 School Board gives students awards?</p> <p>8 A. Yes.</p> <p>9 Q. And in addition to direct awards it also</p> <p>10 gives students recognition for awards that the</p> <p>11 students have won in a wide variety of activities</p> <p>12 relating to their status as students?</p> <p>13 A. Yes.</p> <p>14 Q. You've been a Board member for 30 years,</p> <p>15 has the amount of time spent at individual Board</p> <p>16 meetings that is devoted to student recognition and</p> <p>17 student awards changed over time?</p> <p>18 A. Yes.</p> <p>19 Q. Can you tell me how it changed?</p> <p>20 A. When I first was a Board member we didn't</p> <p>21 do it. It's something that's be added maybe within</p> <p>22 the last ten years.</p> <p>23 Q. So mid '90s?</p> <p>24 A. Yes.</p>
<p>14</p> <p>1 A. Yes.</p> <p>2 Q. Is the School Board involved in any way in</p> <p>3 determining the punishment for teachers who violate</p> <p>4 district policies?</p> <p>5 A. Yes.</p> <p>6 Q. Would you describe for me the process</p> <p>7 involved in that determination?</p> <p>8 A. It usually comes through the superintendent</p> <p>9 as a recommendation.</p> <p>10 Q. And the Board would then adopt the</p> <p>11 recommendation or amend it?</p> <p>12 A. Based on the recommendation of the</p> <p>13 superintendent we would listen to that and make a</p> <p>14 decision.</p> <p>15 Q. The School Board in Indian River also</p> <p>16 approves field trips at its meetings, is that right?</p> <p>17 A. Yes.</p> <p>18 Q. Why is that?</p> <p>19 A. That's our policy.</p> <p>20 Q. Do you have any idea what the reason is for</p> <p>21 that policy?</p> <p>22 A. We would like to know whether or not what</p> <p>23 trips people go on.</p> <p>24 Q. Does it involve determinations about the</p>	<p>16</p> <p>1 Q. Is it the case that prior to that change in</p> <p>2 the mid '90s it was rare for a student to be in</p> <p>3 attendance at Board meetings?</p> <p>4 A. I would say yes.</p> <p>5 Q. And is it the case that since that change</p> <p>6 in the mid '90s it is the case that students</p> <p>7 regularly attend Board meetings?</p> <p>8 A. Pretty much.</p> <p>9 Q. Over the course of a given school year</p> <p>10 could you estimate for me on average how many</p> <p>11 student are in attendance at a Board meeting? A</p> <p>12 couple of dozen?</p> <p>13 A. Not every meeting.</p> <p>14 Q. Well, there are meetings when there are 50</p> <p>15 students, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And but some meetings where there are very</p> <p>18 few?</p> <p>19 A. Yes.</p> <p>20 Q. That's why I said on average maybe a couple</p> <p>21 of dozen over the course of the school year?</p> <p>22 A. Okay.</p> <p>23 Q. The School Board approves construction</p> <p>24 projects?</p>

<p>21</p> <p>1 followed.</p> <p>2 Q. You answered my question about your opinion</p> <p>3 about the School Board being a legislative board by</p> <p>4 comparing the School Board to the General Assembly,</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. Let me ask a couple of more questions. The</p> <p>8 General Assembly doesn't approve field trips, does</p> <p>9 it?</p> <p>10 MR. GOSSELIN: Objection.</p> <p>11 A. No.</p> <p>12 Q. More generally in our -- in the structure</p> <p>13 of our government, is the General Assembly</p> <p>14 responsible for enforcing and administering the</p> <p>15 policies that it sets, the laws that it passes?</p> <p>16 MR. GOSSELIN: Objection.</p> <p>17 A. Ask me the question again please, if you</p> <p>18 would?</p> <p>19 Q. Sure. In our government in the State of</p> <p>20 Delaware is the General Assembly responsible for the</p> <p>21 administration and enforcement of the statutes and</p> <p>22 laws that it passes?</p> <p>23 MR. GOSSELIN: Objection.</p> <p>24 A. Not that I'm aware of.</p>	<p>23</p> <p>1 Q. Do you know what the process would be for</p> <p>2 disciplining a School Board who violated a School</p> <p>3 Board policy?</p> <p>4 A. Never had the issue to do it, but I would</p> <p>5 assume that we would come before the rest of the</p> <p>6 Board members and we would discuss it.</p> <p>7 Q. Fair enough. So, you are not aware of a</p> <p>8 specific policy that sets that process but that as</p> <p>9 for example as Board president is what you</p> <p>10 anticipate what would happen?</p> <p>11 A. Yes.</p> <p>12 Q. I asked you some general questions about</p> <p>13 student attendance at school Board meetings and I</p> <p>14 want to ask some more specific questions. The</p> <p>15 minutes of the meetings reflect a presentation of</p> <p>16 the colors at virtually every meeting, is that</p> <p>17 consistent with your recollection?</p> <p>18 A. Yes, except during the summer months.</p> <p>19 Q. Summer months being when the kids are out</p> <p>20 of school?</p> <p>21 A. Yes.</p> <p>22 Q. So during the academic school year</p> <p>23 September to June you would have presentation of</p> <p>24 colors?</p>
<p>22</p> <p>1 Q. You on the other hand as a School Board</p> <p>2 mention are responsible for the enforcement and</p> <p>3 administration of the policies that you pass, isn't</p> <p>4 that right?</p> <p>5 A. Yes.</p> <p>6 Q. Let me ask you this, on a percentage basis</p> <p>7 over the 30 years of your service as a Board member</p> <p>8 what percentage of your time at public meetings has</p> <p>9 been spent in the consideration of policies and what</p> <p>10 percentage of time has been spent on other areas of</p> <p>11 responsibility?</p> <p>12 A. We have a committee that gives us a report</p> <p>13 each Board meeting on policy. If there are some to</p> <p>14 adopt I'd say maybe just a range of 15 to 20, 25</p> <p>15 minutes a meeting.</p> <p>16 Q. On policy?</p> <p>17 A. Yes.</p> <p>18 Q. And the remainder on non-policy issues?</p> <p>19 A. Yes.</p> <p>20 Q. In the course of your tenure as a School</p> <p>21 Board member are you aware of any instance in which</p> <p>22 a School Board member has been accused of violating</p> <p>23 or failing to comply with a Board policy?</p> <p>24 A. Not that I'm aware of.</p>	<p>24</p> <p>1 A. Yes.</p> <p>2 Q. And the colors are presented by the student</p> <p>3 ROTC groups from the two high schools in the</p> <p>4 district?</p> <p>5 A. Yes.</p> <p>6 Q. Who invites them to do that or do they just</p> <p>7 know that they are suppose to show up?</p> <p>8 A. I believe it's the building principal.</p> <p>9 Q. Building principal of the school in which</p> <p>10 you're meeting?</p> <p>11 A. Yes.</p> <p>12 Q. So, if you were at during the construction</p> <p>13 projects a couple of years ago, if you were at the</p> <p>14 elementary school the principal of the elementary</p> <p>15 school would invites the ROTC?</p> <p>16 A. No.</p> <p>17 Q. I misunderstood you then, who would invite</p> <p>18 them?</p> <p>19 A. Well, right how it's because we have two</p> <p>20 high schools and that's where the ROTC and it would</p> <p>21 be the principals of the two high schools.</p> <p>22 Q. So, if you are meeting at Indian River High</p> <p>23 School the Indian River principal remind the ROTC</p> <p>24 group to show up for the Board meeting?</p>

<p>25</p> <p>1 A. Yes.</p> <p>2 Q. And similarly at the other high school?</p> <p>3 A. Yes.</p> <p>4 Q. Sussex Central, correct?</p> <p>5 A. Yes.</p> <p>6 Q. And who instructs the principals to tell</p> <p>7 the ROTC to show up at the meetings? How do the</p> <p>8 principals find out that they should remind the</p> <p>9 ROTC?</p> <p>10 A. To the best of my knowledge ever since the</p> <p>11 ROTC has been there that's been the process.</p> <p>12 Q. Do you know how long the ROTC has been in</p> <p>13 place?</p> <p>14 A. Probably around five years.</p> <p>15 Q. 2000 or thereabouts?</p> <p>16 A. Yes. I'm not positive but it's somewhere</p> <p>17 around there.</p> <p>18 Q. We talked about students attending the</p> <p>19 meetings for the receipt of awards or recognition,</p> <p>20 who invites them to those meeting?</p> <p>21 A. The building principal.</p> <p>22 Q. The building principal in the school in</p> <p>23 which the meeting is being held?</p> <p>24 A. Well, normally they try to do that to keep</p>	<p>27</p> <p>1 to invite the students to come to the meeting.</p> <p>2 Q. Understood. So, in effect the principal</p> <p>3 tells the central office here are my kids who are</p> <p>4 going to be at the meeting, I have invited them?</p> <p>5 A. Pretty much, yes.</p> <p>6 Q. And is that process a process that was set</p> <p>7 up by the Board at some point in the mid '90s?</p> <p>8 A. It was done by the superintendent.</p> <p>9 Q. Who is the superintendent?</p> <p>10 A. Lois Hobbs, the previous superintendent.</p> <p>11 Q. Let me explore that a little bit. Did Miss</p> <p>12 Hobbs present to the Board the idea that it would be</p> <p>13 good for the Board to recognize achievement of</p> <p>14 students in the schools?</p> <p>15 A. Yes.</p> <p>16 Q. Was there any dissent from that?</p> <p>17 A. Not that I'm aware of.</p> <p>18 Q. Everybody thought it was a good idea?</p> <p>19 A. Yes.</p> <p>20 Q. I understand that recently there has been</p> <p>21 some rumblings that maybe it's gotten out of hand,</p> <p>22 is that correct?</p> <p>23 A. That's it's gotten out of hand.</p> <p>24 Q. That it's taking too long, the awards</p>
<p>26</p> <p>1 down on the travel. But, for example if the meeting</p> <p>2 was going to be held at Indian River, this next</p> <p>3 meeting.</p> <p>4 Q. Yup.</p> <p>5 A. The principal would submit a letter to</p> <p>6 central office of recent awards that has been</p> <p>7 generated by his students and they would be invited</p> <p>8 to come to the meeting.</p> <p>9 Q. So, it would be the building principal</p> <p>10 sends a some kind of memo to the central office</p> <p>11 saying would you please recognize my students who</p> <p>12 have done something notable in the last period and</p> <p>13 then the central office would invite the students?</p> <p>14 A. As I understand it.</p> <p>15 Q. And how does the central office invite the</p> <p>16 student, by a letter?</p> <p>17 A. Well, can we go back a minute?</p> <p>18 Q. Yup.</p> <p>19 A. The principal does all of that. The</p> <p>20 principal send a notice to central office was these</p> <p>21 are the ones that, you know, deserve that.</p> <p>22 Q. Got you.</p> <p>23 A. But to the best of my knowledge the</p> <p>24 principal is the one that also sends out the notices</p>	<p>28</p> <p>1 portion of the meeting?</p> <p>2 A. There's been some discussion, yes.</p> <p>3 Q. Is there some sense that maybe that the</p> <p>4 awards portion of the Board meeting will be</p> <p>5 eliminated?</p> <p>6 A. I can't answer that, I don't know.</p> <p>7 Q. Has there been any discussion of that</p> <p>8 possibility?</p> <p>9 A. Not on the Board level, no.</p> <p>10 Q. Has there been discussion of that among</p> <p>11 Board members outside of the Board meeting?</p> <p>12 A. Yes.</p> <p>13 Q. Who has had such discussions according to</p> <p>14 your knowledge?</p> <p>15 A. I've discussed it with a certain few.</p> <p>16 Q. Which ones?</p> <p>17 A. I know that I did with Dr. Hattier,</p> <p>18 Mr. Helms, Mrs. Bunting, Mrs. Mitchell.</p> <p>19 Q. When did the first of those discussions</p> <p>20 occur roughly speaking?</p> <p>21 A. Probably within the last six months.</p> <p>22 Q. And who initiated discussion you or the</p> <p>23 other side of the conversation?</p> <p>24 A. I did.</p>

<p>33</p> <p>1 A. That's probably true.</p> <p>2 Q. I can now eliminate several pages of my</p> <p>3 outline. Are there instances in which students are</p> <p>4 required to attend Board meetings?</p> <p>5 A. Not that I'm aware of.</p> <p>6 Q. Are you aware of any instance in which a</p> <p>7 student who isn't confronted with a scheduling</p> <p>8 conflict has declined an invitation to attend School</p> <p>9 Board meetings?</p> <p>10 A. Can you repeat the question?</p> <p>11 Q. Yes. Setting aside instances in which</p> <p>12 student has a scheduling conflict and can't come,</p> <p>13 are you aware of any instance in which a student has</p> <p>14 declined an invitation to attend School Board</p> <p>15 meetings?</p> <p>16 A. Not that I'm aware of.</p> <p>17 Q. Is it your expectation as a Board member</p> <p>18 that students would view an invitation from the</p> <p>19 School Board as an attractive invitation for</p> <p>20 recognition of their achievements?</p> <p>21 MR. GOSSELIN: Objection.</p> <p>22 Q. You can answer.</p> <p>23 A. My opinion it would be, it's an honor for</p> <p>24 them to come to receive an award.</p>	<p>35</p> <p>1 A. Yes, it's probably been going on longer</p> <p>2 than the awards issue that she recommended that we</p> <p>3 do.</p> <p>4 Q. Do you have any recollection of when it</p> <p>5 began?</p> <p>6 A. No, I'm not sure.</p> <p>7 Q. I'm going to mark as exhibit, Plaintiff's</p> <p>8 Exhibit 32 a document bearing Bates number, I should</p> <p>9 have told you, Bates numbers you will see on the</p> <p>10 bottom of most of the documents I give you, there is</p> <p>11 a little printed number. Some guy named Bates</p> <p>12 invented this system. So, we identify them on the</p> <p>13 record by Bates numbers so people reading the</p> <p>14 transcript know what we are talking about.</p> <p>15 So, this is a document titled Minutes of</p> <p>16 the Board of Education Special Meeting on July 19,</p> <p>17 1994, it's bearing Bates numbers PR206 through 210.</p> <p>18 (WHEREUPON, Plaintiff's Exhibit 32</p> <p>19 was marked for identification)</p> <p>20 MR. ALLINGHAM: I can't remember</p> <p>21 if I told you Jason we decided last night</p> <p>22 we are going to sequentially number and</p> <p>23 call them Plaintiff's Exhibits so that we</p> <p>24 don't -- I never know which is the better</p>
<p>34</p> <p>1 Q. Yes, sir, and in fact isn't that</p> <p>2 essentially what Mrs. Hobbs said back in the mid</p> <p>3 '90s when she said we ought to be honoring our</p> <p>4 students?</p> <p>5 A. Yes.</p> <p>6 Q. Okay, we identified the ROTC, and we</p> <p>7 identified student who come to the Board meetings to</p> <p>8 receive awards or recognition, is it also the case</p> <p>9 that student government representatives address the</p> <p>10 Board regularly?</p> <p>11 A. During the time of the school year, yes.</p> <p>12 Q. Yes, sir, and in fact there is now a</p> <p>13 section, regular section of the agenda called</p> <p>14 student government which is intended to provide the</p> <p>15 student government representatives with an</p> <p>16 opportunity to address the Board, is that correct?</p> <p>17 A. Yes.</p> <p>18 Q. And that practice was established back in</p> <p>19 it 1999s, is that correct?</p> <p>20 A. That was one of the things that was done by</p> <p>21 a Board member who made the suggestion, it wasn't</p> <p>22 done by Mrs. Hobbs.</p> <p>23 Q. No, sir, I didn't suggest that it was</p> <p>24 separate from the award issue.</p>	<p>36</p> <p>1 way, but that's how we are going to do it.</p> <p>2 MR. GOSSELIN: I prefer -- well,</p> <p>3 you don't care what I prefer. This is</p> <p>4 fine, this is what I prefer.</p> <p>5 MR. ALLINGHAM: I feel better</p> <p>6 then.</p> <p>7 Q. None of this is a memory test, sir. If you</p> <p>8 look at page four of the document Plaintiff's</p> <p>9 Exhibit 32, under student government which is the</p> <p>10 third heading, you will see that Mr. Cohee reports</p> <p>11 on a meeting he had at Sussex Central with some</p> <p>12 students who talked about a lack of communication</p> <p>13 and the inactive student government, and Mr. Cohee</p> <p>14 then made a motion, according to the minutes that</p> <p>15 you seconded, to include on the agenda a ten minute</p> <p>16 segment for student government for both high schools</p> <p>17 and the motion passed unanimously.</p> <p>18 Does that refresh your recollection that it</p> <p>19 was in 1994 that that agenda item was added?</p> <p>20 A. I wasn't sure of the date that it was done,</p> <p>21 but I know Mr. Cohee is the one who brought it.</p> <p>22 Q. And looking at these minutes does that</p> <p>23 refresh your recollection that it was 1994?</p> <p>24 A. This says July 19, 1994.</p>

<p>37</p> <p>1 Q. Right above that heading, there is a</p> <p>2 heading in the minutes called public comments in</p> <p>3 which it's reported you made a motion seconded by</p> <p>4 Mr. Moore to add a 15 minutes segment for public</p> <p>5 comments at the beginning of regular Board meetings,</p> <p>6 do you recall having done that?</p> <p>7 A. Yes.</p> <p>8 Q. Why did you do that?</p> <p>9 A. I thought it was important for people in</p> <p>10 the community to come and talk to us about things</p> <p>11 that was on their minds, concerns or anything like</p> <p>12 that or have input.</p> <p>13 Q. Is there any restriction on what people can</p> <p>14 say during that public comment period?</p> <p>15 A. They cannot talk about anything to do with</p> <p>16 personnel issues.</p> <p>17 Q. What's the reason for that?</p> <p>18 A. Because personnel issues are private.</p> <p>19 Q. Any other restrictions at all?</p> <p>20 A. Other than the fact that it's supposed to</p> <p>21 be limited to 15 minutes and if you come to speak as</p> <p>22 an individual it's three minutes and if you speak as</p> <p>23 group I believe you are entitled to four minutes.</p> <p>24 Q. Have those time limits been in existence</p>	<p>39</p> <p>1 communication on the general public?</p> <p>2 A. Yes.</p> <p>3 Q. And it's your view as a Board member that</p> <p>4 that privilege should not be abused?</p> <p>5 A. Yes.</p> <p>6 Q. Since 1994 when the student government</p> <p>7 portion of the meeting was established has it been</p> <p>8 the case that most meetings during the academic</p> <p>9 school year student government representatives have</p> <p>10 addressed the Board?</p> <p>11 A. During the school year?</p> <p>12 Q. Yes.</p> <p>13 A. Yes.</p> <p>14 Q. Is it your practice that when they speak,</p> <p>15 the student representatives speak to the Board, that</p> <p>16 the nature of their remarks is identified in the</p> <p>17 minutes?</p> <p>18 A. I don't think it's verbatim.</p> <p>19 Q. Is the fact that a student representative</p> <p>20 spoke reflected in the minutes?</p> <p>21 A. To the best of my knowledge.</p> <p>22 Q. That's your intent anyway?</p> <p>23 A. Yes.</p> <p>24 Q. When you come to the student government</p>
<p>38</p> <p>1 ever since 1994 when the public comment period was</p> <p>2 adopted?</p> <p>3 A. To the best of my knowledge.</p> <p>4 Q. You're now Board president, and so you sort</p> <p>5 of run the meeting, is that right?</p> <p>6 A. Yes.</p> <p>7 Q. Isn't there also a restriction on people</p> <p>8 are not -- you would be permit people to make</p> <p>9 offensive comments?</p> <p>10 A. Yes.</p> <p>11 Q. Or derogatory comments?</p> <p>12 A. Yes.</p> <p>13 Q. And that's just part of your responsibility</p> <p>14 to keep order at the meeting?</p> <p>15 A. Yes.</p> <p>16 Q. Is it your view that public comments should</p> <p>17 be respectful?</p> <p>18 A. Should be respectful?</p> <p>19 Q. Yes.</p> <p>20 A. Yes.</p> <p>21 Q. Is it also your view as a Board member that</p> <p>22 the establishment of the public comment portion of</p> <p>23 the meeting was rather than being required by law it</p> <p>24 was an effort by the Board to confer a privilege of</p>	<p>40</p> <p>1 portion of the agenda do you as the board president</p> <p>2 invite the student government representatives to</p> <p>3 come forward to speak?</p> <p>4 A. Yes.</p> <p>5 Q. Describe for me, if you can, the nature of</p> <p>6 the topics that student government representatives</p> <p>7 have discussed with the Board over the years?</p> <p>8 A. Any awards that the school might have won</p> <p>9 since the previous time they spoke, scores of</p> <p>10 athletic events, the placement of the, on the state</p> <p>11 log of where we rank, if we are having a good year</p> <p>12 and things like that they do that. And they invite</p> <p>13 us to certain things that's coming up like maybe a</p> <p>14 concert or a ROTC dinner or things like. We are</p> <p>15 invited to come to things like that. That's</p> <p>16 basically what they do.</p> <p>17 Q. And does the School Board or individual</p> <p>18 members of the School Board accept those invitations</p> <p>19 and attend those events?</p> <p>20 A. I try to go to as many as I possibly can.</p> <p>21 Q. Do you see fellow Board members there?</p> <p>22 A. Yes.</p> <p>23 Q. This may sound like a funny question</p> <p>24 Mr. Bireley, but do you view you take your</p>

<p>41</p> <p>1 responsibilities as a Board member seriously, don't</p> <p>2 you?</p> <p>3 A. Yes.</p> <p>4 Q. And is it your sense that your fellow Board</p> <p>5 members also take their responsibilities seriously?</p> <p>6 A. Yes.</p> <p>7 Q. Have you ever had a sense that your</p> <p>8 colleagues on the Board were not trying their best</p> <p>9 to discharge their responsibilities as Board</p> <p>10 members?</p> <p>11 A. No.</p> <p>12 Q. So, this will sound like a summary</p> <p>13 question, and it is, in your 30 years or so of</p> <p>14 service on the Board you have throughout those 30</p> <p>15 years of service you have been confident that your</p> <p>16 fellow Board members are using their best efforts to</p> <p>17 discharge their Board responsibilities</p> <p>18 appropriately?</p> <p>19 A. To the west of my knowledge?</p> <p>20 Q. Yeah.</p> <p>21 A. Yes.</p> <p>22 Q. Do student government representatives from</p> <p>23 time to time express concerns to the Board about</p> <p>24 issues in their schools?</p>	<p>43</p> <p>1 A. Most of the time during the month of</p> <p>2 December a group would come in to perform either</p> <p>3 singing or a small acting type thing. The Odyssey</p> <p>4 of the Mind students have come in and did their</p> <p>5 little skit that they did in national in front of</p> <p>6 the Board.</p> <p>7 Q. It SDSA Steel Band, that's a musical group?</p> <p>8 A. Yes.</p> <p>9 Q. Is that one of the December performances?</p> <p>10 A. They came I'm not sure whether it was</p> <p>11 December, but we have had them there, yes.</p> <p>12 Q. What is the Odyssey of the Mind?</p> <p>13 A. It's a group of student that are elevated</p> <p>14 students, you know the better students that through</p> <p>15 creativity they do skits or they do like a play or</p> <p>16 something like that that they go to state and</p> <p>17 national competition and be judged with other school</p> <p>18 districts.</p> <p>19 Q. And so they came and sort of made their</p> <p>20 presentation to the Board?</p> <p>21 A. Yes.</p> <p>22 Q. I noticed in some of the older minutes</p> <p>23 there were band groups that had done national</p> <p>24 competitions and then had performances for the</p>
<p>42</p> <p>1 A. Yes.</p> <p>2 Q. Give me an example of some concerns that</p> <p>3 they've expressed?</p> <p>4 A. The period of time that Sussex Central was</p> <p>5 going through their construction and they actually</p> <p>6 were placed in a building maybe a year ahead of time</p> <p>7 they shouldn't have been there, and it was -- well</p> <p>8 basically it was not a very good experiences for</p> <p>9 them. We heard some of that type of thing.</p> <p>10 Q. It's a legitimate concern?</p> <p>11 A. Yes.</p> <p>12 Q. Any other that you can think of?</p> <p>13 A. Not that I can remember.</p> <p>14 Q. Do student groups sometimes attend Board</p> <p>15 meetings?</p> <p>16 A. Yes.</p> <p>17 Q. Can you give me some examples?</p> <p>18 A. Well, I consider it to be a group when the</p> <p>19 come in to get their awards if that's what you mean.</p> <p>20 Q. No, I meant you know musical groups or I</p> <p>21 guess the ROTC would qualify as a group, some group</p> <p>22 that attends Board meetings as a group?</p> <p>23 A. Yes.</p> <p>24 Q. Can you give me some examples?</p>	<p>44</p> <p>1 Board, do you recall that?</p> <p>2 A. At a Board meeting?</p> <p>3 Q. Yes.</p> <p>4 A. No, I really don't.</p> <p>5 Q. The student groups that attend the School</p> <p>6 Board meetings who invites them?</p> <p>7 A. The students?</p> <p>8 Q. The student groups like the steel band or</p> <p>9 the musical groups or ROTC, who invites them?</p> <p>10 A. The superintendent.</p> <p>11 Q. Is that done by a letter to the groups?</p> <p>12 A. I'm not sure.</p> <p>13 Q. Okay. In one of the minutes, and I don't</p> <p>14 have it here, so if you don't remember it's not a</p> <p>15 big deal, but do you recall a student representative</p> <p>16 addressing the Board with concerns about the quality</p> <p>17 of the water and quality of the athletic fields at</p> <p>18 Sussex Central?</p> <p>19 A. Yes.</p> <p>20 Q. Was it helpful to the Board to get student</p> <p>21 input on issues like that?</p> <p>22 A. Yes.</p> <p>23 Q. How did the School Board respond to those</p> <p>24 concerns?</p>

<p>45</p> <p>1 A. We tried to make them better.</p> <p>2 Q. The student government representative</p> <p>3 portion of the agenda is limited to the two high</p> <p>4 school, is that right?</p> <p>5 A. Yes.</p> <p>6 Q. Are there instances in which other</p> <p>7 representatives of student bodies express concerns</p> <p>8 about conditions at their schools, that is a other</p> <p>9 than the high schools?</p> <p>10 A. I can't remember.</p> <p>11 Q. Do you recall in August of 2004 a</p> <p>12 Selbyville middle school student expressing a</p> <p>13 concern about the loss of safety and school climate</p> <p>14 positions?</p> <p>15 A. Oh, yes.</p> <p>16 Q. Do you recall students speaking to the</p> <p>17 Board about concerns about the Southern Delaware</p> <p>18 Schools of the Arts?</p> <p>19 A. Yes.</p> <p>20 Q. And in each of these cases where students</p> <p>21 come to the Board to address their concerns, does</p> <p>22 the Board benefit from the attendance of the</p> <p>23 students and expression of their concerns?</p> <p>24 A. Do they benefit?</p>	<p>47</p> <p>1 they come to that.</p> <p>2 Q. Oh, I see so there is that limitation in</p> <p>3 the public comment session where you can't speak</p> <p>4 about personnel issues, but there is a way for a</p> <p>5 member of the public to speak to the Board about</p> <p>6 personnel issues?</p> <p>7 A. Yes.</p> <p>8 Q. By making an application to speak at an</p> <p>9 executive session?</p> <p>10 A. Yes.</p> <p>11 Q. How do members of the public -- how can</p> <p>12 members of the public find out about that avenue for</p> <p>13 expressing their concerns to the executive session?</p> <p>14 A. They can contact the superintendent.</p> <p>15 Q. It's not posted that you can do that</p> <p>16 anywhere on the web site or in the policies?</p> <p>17 A. I'm not sure.</p> <p>18 Q. How would students find out about the</p> <p>19 possibility of speaking to executive session?</p> <p>20 A. It's like a chain of command. If they have</p> <p>21 an issue they can go to the building principal</p> <p>22 first. Then they can go to the superintendent and</p> <p>23 the superintendent would make them aware that no you</p> <p>24 cannot stand up in front of the Board meeting and</p>
<p>46</p> <p>1 Q. Yes. Is it helpful to the Board?</p> <p>2 A. Yes.</p> <p>3 Q. And in case does the Board try to address</p> <p>4 the concerns of the students?</p> <p>5 A. Yes.</p> <p>6 Q. Is there any other forum for the students</p> <p>7 to address the Board other than the public School</p> <p>8 Board meeting?</p> <p>9 A. Yes.</p> <p>10 Q. What is that?</p> <p>11 A. They can come in executive session.</p> <p>12 Q. Would that be by invitation of the Board</p> <p>13 itself?</p> <p>14 A. They apply, they write a letter and tell us</p> <p>15 that they have something that they want to talk</p> <p>16 about which is usual a personnel issue and we allow</p> <p>17 them to come.</p> <p>18 Q. And that has happened in the past?</p> <p>19 A. Yes.</p> <p>20 Q. How frequently?</p> <p>21 A. Rarely, but we do allow it. The same way</p> <p>22 that we allow a person in the community to do the</p> <p>23 same thing if it's a personnel issue something that</p> <p>24 we are not allowed to discuss during an open session</p>	<p>48</p> <p>1 talk about this particular issue, however, if you</p> <p>2 want to do it in executive session then they would</p> <p>3 be told that they can do it in executive session.</p> <p>4 Q. So, the superintendent would let them know</p> <p>5 which way they could go?</p> <p>6 A. Yes.</p> <p>7 Q. Apart from speaking to the board at public</p> <p>8 sessions, or speaking to the Board in executive</p> <p>9 session, is there any other way that students have</p> <p>10 the ability to speak directly to the School Board?</p> <p>11 A. Other than just maybe seeing us out</p> <p>12 somewhere and they make a comment individually.</p> <p>13 Q. No other official way to speak to the</p> <p>14 School Board?</p> <p>15 A. Not that I'm aware of.</p> <p>16 Q. It always warms witness' hearts when I</p> <p>17 start skipping through and I have a long red line on</p> <p>18 the outline.</p> <p>19 MS. ALLINGHAM: Miss duPhily has</p> <p>20 told me we have about four minutes of tape</p> <p>21 left, we are going to change the tape now,</p> <p>22 just take a minute.</p> <p>23 MS. DUPHILY: Going off the record</p> <p>24 at approximately 10:10 a.m..</p>

<p style="text-align: right;">57</p> <p>1 Q. So, to the best of your recollection at</p> <p>2 every Board meeting during your service as a Board</p> <p>3 member the School Board opened the meeting with a</p> <p>4 prayer?</p> <p>5 A. To the best of my knowledge.</p> <p>6 Q. Who decided, and this is all prior to the</p> <p>7 more recent adoption of the School Board Prayer</p> <p>8 Policy, who decided which Board member would lead</p> <p>9 the group in prayer or offer a prayer?</p> <p>10 A. The Board president.</p> <p>11 Q. How was it decided which School Board</p> <p>12 member would open the meeting with a prayer?</p> <p>13 A. The Board president just asked someone, I</p> <p>14 don't know how.</p> <p>15 Q. Were there any restriction of any kind on</p> <p>16 what sort of prayer a School Board member could</p> <p>17 over?</p> <p>18 A. Not that I'm aware of.</p> <p>19 Q. Prior to the adoption of Policy BDA.1,</p> <p>20 which is the School Board Prayer Policy in October</p> <p>21 of 2004, was there any policy that governed the</p> <p>22 offering of prayer at School Board meetings?</p> <p>23 A. Not that I'm aware of.</p> <p>24 Q. Were you ever asked to lead the Board in</p>	<p style="text-align: right;">59</p> <p>1 who would be invited to offer the prayer?</p> <p>2 A. It was usually done by a small portion of</p> <p>3 the group of ten.</p> <p>4 Q. And did they have any common</p> <p>5 characteristics, the small portion?</p> <p>6 A. Not that I'm aware of.</p> <p>7 Q. Do you know how that small group, smaller</p> <p>8 group was identified by the Board?</p> <p>9 A. To my knowledge the Board president would</p> <p>10 call on someone at the Board meeting to say the</p> <p>11 prayer, that's all I know.</p> <p>12 Q. But you told me that a small group of the</p> <p>13 Board was asked to offer the prayer, a group that</p> <p>14 you were not a member of, do you know how that group</p> <p>15 was identified or picked or selected to be the ones</p> <p>16 who would offer the prayer?</p> <p>17 A. No.</p> <p>18 Q. How small a group, two, three?</p> <p>19 A. Three, four, somewhere in that</p> <p>20 neighborhood.</p> <p>21 Q. Was a Jewish Board member ever included in</p> <p>22 that group?</p> <p>23 A. I don't recall us ever having a Jewish</p> <p>24 Board member.</p>
<p style="text-align: right;">58</p> <p>1 prayer or offer a prayer at the beginning of School</p> <p>2 Board meetings prior to the adoption of the School</p> <p>3 Board policy?</p> <p>4 A. No.</p> <p>5 Q. So, 1974 to 2004 is the period of time</p> <p>6 during which you were a School Board member with a</p> <p>7 three year hiatus, so if my arithmetic is right</p> <p>8 that's 27 years of service prior to the adoption of</p> <p>9 Board Policy BDA.1, and you were never asked to</p> <p>10 offer a prayer at a School Board meeting?</p> <p>11 A. That's correct.</p> <p>12 Q. Do you know why?</p> <p>13 A. No.</p> <p>14 Q. Did you ever tell any Board president that</p> <p>15 you were not interested in offering a prayer at the</p> <p>16 School Board meeting?</p> <p>17 A. No.</p> <p>18 Q. Again, if my arithmetic is correct, that's</p> <p>19 well over 300 School Board meetings at which</p> <p>20 somebody offered a prayer, but you were not invited</p> <p>21 to do so, did that strike you as off or unusual?</p> <p>22 A. No.</p> <p>23 Q. Did you perceive any pattern in the Board</p> <p>24 president's practice in the selection of the person</p>	<p style="text-align: right;">60</p> <p>1 Q. Was a Muslim Board member ever included in</p> <p>2 that group?</p> <p>3 A. I don't call us having a Muslim Board</p> <p>4 member.</p> <p>5 Q. Or a Buddhist?</p> <p>6 A. Same answer.</p> <p>7 Q. A non-Christian Board member ever included</p> <p>8 in that group?</p> <p>9 A. I don't recall us ever having that type of</p> <p>10 Board member.</p> <p>11 Q. Would you characterize the members of that</p> <p>12 smaller group as being particularly religious</p> <p>13 amongst their peers?</p> <p>14 MR. GOSSELIN: Objection.</p> <p>15 A. Do I answer?</p> <p>16 Q. Yes, sir.</p> <p>17 A. Can you please ask that question again?</p> <p>18 Q. Was it -- did you perceive that the</p> <p>19 criteria for selection of this smaller group was</p> <p>20 that these were folks who were particularly</p> <p>21 religious?</p> <p>22 MR. GOSSELIN: Objection.</p> <p>23 A. No.</p> <p>24 Q. Let me just ask the broad question, is it</p>

<p>65</p> <p>1 Q. But you did have a conversation in words or 2 substance like that with everybody to whom you had 3 not offered the invitation previously? 4 A. Previous to that, yes. 5 Q. Dr. Hattier testified yesterday, that he 6 works very hard to prepare his prayer, that it 7 doesn't flow easily, and he is not good at direct 8 quotations, he tries to write down what he's going 9 to say, is that consistent with your notion that Dr. 10 Hattier would fall into the group that is better at 11 offering a School Board prayer? 12 A. Yes. 13 Q. Is that because the content of the prayers 14 that he offers after his hard work seems to you to 15 be inspirational? 16 A. Yes. 17 Q. Seems to you to serve the purpose of School 18 Board prayer? 19 A. Yes. 20 Q. So, in Dr. Hattier's case it's the content 21 of the prayer that leads you to select Dr. Hattier? 22 A. Yes. 23 Q. The group of people that you identified for 24 me on the current Board that are good at, I'm using</p>	<p>67</p> <p>1 of Jesus Christ? 2 A. That they did not. 3 Q. Yes. 4 A. Not that I'm aware of. 5 Q. And that would be your expectation, 6 wouldn't it, that each of those three persons would 7 offer a prayer that would invoke the name of Jesus 8 Christ? 9 MR. GOSSELIN: Objection. 10 Q. You can answer. 11 A. Yes. 12 Q. Now, I want to explore with you how you as 13 Board president have implemented the rotational 14 aspect of Board Policy BDA.1. Have you since the 15 passage of the policy and during your tenure as 16 Board president rotated the invitation among all 17 Board members? 18 A. For those who wanted to, yes. 19 Q. How did you find out who wanted to and who 20 didn't? 21 A. I did the same thing as I did before, I 22 asked them were they willing, did they want to 23 participate, did they want to issue a prayer, if 24 they did please let me know.</p>
<p>66</p> <p>1 a generic term, but that would be in that smaller 2 subset of the Board, I want to, make sure because I 3 have some questions based on the membership of that 4 sub group, is Dr. Hattier, Mr. Helms, is it Ms. 5 Mitchell or Dr. Mitchell? 6 A. Mrs. Mitchell. 7 Q. And Mrs. Bunting, correct? 8 A. Correct. 9 Q. Have you ever heard Mr. Helms -- first of 10 all, since the adoption of the policy have you as 11 Board president invited each of those four people to 12 take up the opportunity established by the Board 13 policy to open the meeting with a prayer? 14 A. The ones that we are talking about now? 15 Q. Those four that I just identified? 16 A. To the best of my knowledge, yes. 17 Q. And has each of those persons accepted the 18 invitation when you extended it? 19 A. Yes. 20 Q. Have they ever turned it down? 21 A. No. 22 Q. In the case of Mr. Helms, Mrs. Mitchell and 23 Mrs. Bunting, do you recall any instance in which 24 they offered a prayer that did not invoke the name</p>	<p>68</p> <p>1 Q. All right, so when did you become Board 2 president in 2005, July? 3 A. July 1st. 4 Q. So, some time before the July 2005 Board 5 meeting you contacted each of the Board members to 6 ask whether they wanted to be extended an invitation 7 to offer the prayer? 8 A. The existing Board member and the new Board 9 members come on except the three that are on there 10 now. The three that were recently elected and came 11 on I have not had that conversation with those 12 three. 13 Q. The three that were elected in March 2006? 14 A. Yes, and that came on July 1st, of this 15 year. 16 Q. So, I gather that some Board members when 17 you contacted them on this issue said no I would 18 prefer not to be invited to offer the prayer at the 19 beginning of the meeting? 20 A. That's true. 21 Q. Which Board members told you that? 22 A. I asked Mr. Walls was the one specifically 23 asked me, when I asked him he said he declined right 24 at the present time, but if he chose to do it later</p>

<p>73</p> <p>1 A. Yes.</p> <p>2 Q. One person in response to your request</p> <p>3 affirmatively said I would like to not be included</p> <p>4 in the rotation at this time?</p> <p>5 A. Yes.</p> <p>6 Q. And that was Mr. Walls?</p> <p>7 A. Yes.</p> <p>8 Q. So, tell me, which persons affirmatively</p> <p>9 said yes I would like to be included in the</p> <p>10 rotation?</p> <p>11 A. Dr. Hattier, Mrs. Mitchell, Mr. Helms,</p> <p>12 Mrs. Bunting. Is that five?</p> <p>13 Q. That's four?</p> <p>14 A. I'm trying to think.</p> <p>15 Q. Do you need a list of the Board members?</p> <p>16 It happens to me all the time?</p> <p>17 A. They normally sit at the same chairs, I'm</p> <p>18 trying to go around. Maybe it's only four. I'm</p> <p>19 trying to think who is sitting on the other side.</p> <p>20 Q. Mr. Evans?</p> <p>21 A. He is not a Board member anymore.</p> <p>22 Q. In July did he indicate an interest in --</p> <p>23 A. Yeah, he did. I mean he participated I was</p> <p>24 thinking of right now.</p>	<p>75</p> <p>1 make a note on that.</p> <p>2 Q. And this is going to sound tedious, but I'm</p> <p>3 trying to identify precisely what objects there are</p> <p>4 that have the words, so do you have a pad that has</p> <p>5 the disclaimer?</p> <p>6 A. It's just a single piece of paper like this</p> <p>7 that has the disclaimer that I read at each Board</p> <p>8 meeting.</p> <p>9 Q. What do you do write down the name of the</p> <p>10 person who gave the prayer?</p> <p>11 A. That who is suppose to do it, yes.</p> <p>12 Q. And then how do you know who the next</p> <p>13 person is in the rotation?</p> <p>14 A. The one that -- I try to go by the one --</p> <p>15 in other words, for the ones who are doing it right</p> <p>16 now, there is four of them, then that other one will</p> <p>17 not do it again for four months as it stands right</p> <p>18 now.</p> <p>19 Q. And so how do you remember what has gone in</p> <p>20 the preceding three months and who is next?</p> <p>21 A. I make notes of it.</p> <p>22 Q. And you make that note on the disclaimer</p> <p>23 piece of paper?</p> <p>24 A. Yeah.</p>
<p>74</p> <p>1 Q. So, is your best guess that those are the</p> <p>2 four who indicated an interest in participating?</p> <p>3 A. Well, it would be five including Mr. Evans.</p> <p>4 Q. Five with Mr. Evans, but he is now off the</p> <p>5 Board. So, on the current Board you have a group of</p> <p>6 four who have affirmatively said I'd like to</p> <p>7 volunteer to be in the rotation and offer a prayer?</p> <p>8 A. Yes.</p> <p>9 Q. And you have not yet talked to any of the</p> <p>10 three more recently elected Board members?</p> <p>11 A. That is true but their names are coming up,</p> <p>12 their time, so I would talk to them probably within</p> <p>13 the next maybe prior to the next Board meeting. I</p> <p>14 am not sure. I have it written down at home.</p> <p>15 Q. I was just going to ask you that, so how do</p> <p>16 you keep track of who's next in the rotation?</p> <p>17 A. Well, I try to make notes for myself.</p> <p>18 Q. And where do you keep those notes?</p> <p>19 A. At home.</p> <p>20 Q. Do you have a Board file of some kind?</p> <p>21 A. No.</p> <p>22 Q. Where did you keep them?</p> <p>23 A. I have a disclaimer, that I'm sure you are</p> <p>24 aware of that I read before every Board meeting. I</p>	<p>76</p> <p>1 Q. So, the four members who are currently on</p> <p>2 your rotation list, my memory is really shot, Dr.</p> <p>3 Hattier, Mr. Helms Mrs. Mitchell and Mrs. Bunting,</p> <p>4 would you characterize those four as good at</p> <p>5 offering school board prayer?</p> <p>6 A. Yes.</p> <p>7 Q. I don't know how else to say it, they are</p> <p>8 skilled at it?</p> <p>9 A. Yes.</p> <p>10 Q. In your home where do you keep the</p> <p>11 disclaimer page?</p> <p>12 A. In my office.</p> <p>13 Q. Do you keep any other materials related to</p> <p>14 your service as a Board member or Board president</p> <p>15 with that disclaimer page?</p> <p>16 A. No.</p> <p>17 Q. So you have a single page that relates to</p> <p>18 the School Board and your service as a member in</p> <p>19 your home?</p> <p>20 A. It's usually in the packet, the Board</p> <p>21 packet.</p> <p>22 Q. Do you keep the Board packet?</p> <p>23 A. Do I keep them?</p> <p>24 Q. Yes.</p>

<p>85</p> <p>1 Q. Do you know precisely when that took place?</p> <p>2 A. No.</p> <p>3 Q. Did Mr. Helms subsequently report on the</p> <p>4 substance of his conversation with Mr. Neuberger to</p> <p>5 the Board?</p> <p>6 A. He got Mr. Neuberger to come and visit us.</p> <p>7 Q. Do you know when that took place?</p> <p>8 A. Not exactly.</p> <p>9 Q. Was it the summer of 2004?</p> <p>10 A. It was after the graduation ceremony, yes.</p> <p>11 Q. Was it before the commencement of the next</p> <p>12 academic year?</p> <p>13 A. Yes, I'm pretty sure it was.</p> <p>14 Q. So, sometime during the summer of 2004?</p> <p>15 A. Yes.</p> <p>16 Q. Do you know whether Mr. Neuberger's visit</p> <p>17 to the Board is reflected in the minutes of the</p> <p>18 Board meeting?</p> <p>19 A. I believe, if I am not mistaken that this</p> <p>20 was a special Board meeting, it wasn't a regular</p> <p>21 Board meeting.</p> <p>22 Q. Okay. Do you know whether the minutes of</p> <p>23 that meeting reflect Mr. Neuberger's attendance?</p> <p>24 A. I thought it was.</p>	<p>87</p> <p>1 is there any distinction other than that the public</p> <p>2 is present at those regularly scheduled public</p> <p>3 meetings?</p> <p>4 A. Sometimes there is public at special</p> <p>5 meetings, too.</p> <p>6 Q. Oh, and even if there is public at the</p> <p>7 special meetings you don't offer a pray?</p> <p>8 A. That's correct.</p> <p>9 Q. Is there any distinction from your point of</p> <p>10 view, just as an individual Board member, between a</p> <p>11 special meeting at which the public is present and a</p> <p>12 regular meeting at which the public is present that</p> <p>13 would lead to pray at the latter but not at the</p> <p>14 former?</p> <p>15 A. Except it's always the way that it's been</p> <p>16 done.</p> <p>17 Q. How often does the Board, just an estimate</p> <p>18 over your 30 years of tenure, how often does the</p> <p>19 Board call special Board meetings?</p> <p>20 A. Two to three a year maybe.</p> <p>21 Q. And how often does the public attend</p> <p>22 special Board meetings?</p> <p>23 A. I'm not sure.</p> <p>24 Q. Not very frequently?</p>
<p>86</p> <p>1 Q. Did had a special Board meeting open with a</p> <p>2 prayer?</p> <p>3 A. I don't believe it did.</p> <p>4 Q. Why is that?</p> <p>5 A. I know it's probably sounds strange but the</p> <p>6 prayer issue usually is on regular Board meeting.</p> <p>7 If we have a special Board meeting we don't do it.</p> <p>8 Q. Why would your say that sounds strange?</p> <p>9 A. Because we just have a rule, or I guess</p> <p>10 it's a past practice or whatever that we always have</p> <p>11 the prayer at the regular Board meetings but no</p> <p>12 other.</p> <p>13 Q. And when you say the regular Board meetings</p> <p>14 those are the regular meetings at which the public</p> <p>15 is present?</p> <p>16 A. Yes, once a month.</p> <p>17 Q. And is that regular practice it's not just</p> <p>18 today's practice or 2004's regular practice, it's</p> <p>19 the regular practice that goes back in time as far</p> <p>20 as your tenure on the Board extends, correct?</p> <p>21 A. Yes.</p> <p>22 Q. And is that because -- is the distinction</p> <p>23 between public meetings where prayers are offered</p> <p>24 and private meetings where prayers are not offered,</p>	<p>88</p> <p>1 A. I wouldn't say not all three of them. Say</p> <p>2 if we do two or three a year, say not all three. It</p> <p>3 depends on what the issue is.</p> <p>4 Q. In this litigation we have had the</p> <p>5 opportunity to look at the minutes of Board</p> <p>6 meetings, and I'll represent to you that since the</p> <p>7 adoption of Policy BDA.1, the School Board Prayer</p> <p>8 Policy on October 19, 2004, since that date there</p> <p>9 have been at least 17 special Board meetings over</p> <p>10 the course of that two year period.</p> <p>11 So, that's eight to nine per year. Has the</p> <p>12 incidents of special Board meetings increased in</p> <p>13 recent years?</p> <p>14 A. The difference between what I'm talking</p> <p>15 about and what you're talking about is we have a</p> <p>16 special Board meeting the we interview for</p> <p>17 personnel, I'm not talking about that. I'm talking</p> <p>18 about issues other than hiring of personnel that we</p> <p>19 have a special Board meeting for.</p> <p>20 Q. Okay, so I can think of it as two</p> <p>21 categories of special meetings, one is a category</p> <p>22 which is limited to hiring personnel for the</p> <p>23 district?</p> <p>24 A. Okay.</p>

<p>101</p> <p>1 Q. Correct?</p> <p>2 A. Yes.</p> <p>3 Q. And you don't have any information about</p> <p>4 where the policy committee, what formed the basis</p> <p>5 for the policy committee's drafting of the text of</p> <p>6 this policy?</p> <p>7 A. That is true.</p> <p>8 Q. When the policy was presented to the full</p> <p>9 Board did you ask the policy committee what had been</p> <p>10 the basis for the text that was presented to you?</p> <p>11 A. No, I did not.</p> <p>12 Q. Why not?</p> <p>13 A. Because I read it and it appeared that wit</p> <p>14 this policy or any other policy we always run it by</p> <p>15 the attorneys before we are allowed to see it, and</p> <p>16 it was like something that was out of my domain, I</p> <p>17 don't have the legal background to ask questions</p> <p>18 like that, so I assumed that this was the way that</p> <p>19 we should go.</p> <p>20 Q. Did the full the Board make the decision to</p> <p>21 refer to the policy committee the issue of whether</p> <p>22 to adopt the policy on School Board prayer?</p> <p>23 A. That's the procedure.</p> <p>24 Q. So, there was a point at which the full</p>	<p>103</p> <p>1 A. If a person is a Christian it should not</p> <p>2 appear that the Christian prayer is the only one</p> <p>3 there is. It's just from the individual.</p> <p>4 Q. Fair enough. That could be accomplished I</p> <p>5 suppose by saying before whatever you say as a Board</p> <p>6 member I am not intending by offering this prayer to</p> <p>7 suggest that this is the only appropriate prayer or</p> <p>8 that the faith in which this prayer is offered is</p> <p>9 the only appropriate faith?</p> <p>10 A. I would agree with that.</p> <p>11 Q. That's kind of the thrust that you are</p> <p>12 trying to get at in this policy?</p> <p>13 A. Uh-hum. If I can say something, you want</p> <p>14 to know what I read before every Board meeting, is</p> <p>15 paragraph one and paragraph three.</p> <p>16 Q. Oh, good, we were going to come to that,</p> <p>17 but we might as well address it now. So, the words</p> <p>18 on that disclaimer page that you have --</p> <p>19 A. Yes.</p> <p>20 Q. -- are the words of paragraph one and</p> <p>21 paragraph three?</p> <p>22 A. Yes, that's the disclaimer that I read at</p> <p>23 every meeting.</p> <p>24 Q. So, at every meeting, you say, "In order to</p>
<p>102</p> <p>1 Board said should we adopt the School Board Prayer</p> <p>2 Policy or not?</p> <p>3 A. I would say probably, yes.</p> <p>4 Q. And do you know when that discussion or</p> <p>5 consideration occurred?</p> <p>6 A. No.</p> <p>7 Q. Some time after graduation?</p> <p>8 A. Yes.</p> <p>9 Q. Sometime before October 1th9?</p> <p>10 A. Yes.</p> <p>11 Q. Did that determination occur before or</p> <p>12 after the big meeting on August 24th?</p> <p>13 A. Are we talking about August the 24th of</p> <p>14 2004.</p> <p>15 Q. Yes, sir.</p> <p>16 A. I think it was after that, but I'm not</p> <p>17 positive, but I think so.</p> <p>18 Q. Back to the text of paragraph three. Am I</p> <p>19 correct that the Board intends that the prayer</p> <p>20 opportunity should not be used to advance any</p> <p>21 particular faith?</p> <p>22 A. Yes.</p> <p>23 Q. And when you say advance any particular</p> <p>24 faith, what do you mean by that?</p>	<p>104</p> <p>1 solemnify its proceedings, the Board of Education</p> <p>2 may choose to open its meetings with a prayer or</p> <p>3 moment of silence, all in accord with the freedom of</p> <p>4 conscience of the individual adult Board member.</p> <p>5 Such opportunity shall not be used or exploited to</p> <p>6 proselytize, advance or convert anyone or to</p> <p>7 derogate or otherwise disparage any particular faith</p> <p>8 or belief?"</p> <p>9 A. I'm sorry, that is not the paragraph, I'm</p> <p>10 sorry. It's one and four.</p> <p>11 Q. Got you.</p> <p>12 A. After I read paragraph one I then read</p> <p>13 paragraph four. But when it came to me, Mr. Walls</p> <p>14 passed it on down to me after he became.</p> <p>15 Q. Yes, sir?</p> <p>16 A. That's what this is, when I talk about the</p> <p>17 disclaimer it's paragraph one and paragraph four.</p> <p>18 Q. And you are confident that you read the</p> <p>19 text of paragraph one and paragraph four at every</p> <p>20 Board meeting?</p> <p>21 A. At every Board meeting.</p> <p>22 Q. Every Board meeting at which prayer is</p> <p>23 offered?</p> <p>24 A. I'm not going to say that I've never</p>

<p style="text-align: right;">121</p> <p>1 Q. You told me earlier that you told her to 2 call Mr. Wallis? 3 A. Well, she wanted to talk to the Board 4 president. 5 Q. Okay, so you are confident that you told 6 her to call Mr. Wallis because he was the Board 7 president? 8 A. Yes. 9 Q. And you think you probably also said that 10 if you want to speak to the Board call central 11 office? 12 A. Because that's our practice, yes. I hope I 13 did that. 14 Q. Did you ever hear that Mrs. Dobrich did in 15 fact contact central office? 16 A. Yes. 17 Q. Did you ever hear what they told her? 18 A. No. 19 Q. Did you ever hear that she had difficulty 20 getting her issue on the agenda? 21 A. I heard about that later on, yes. 22 Q. Who did you hear about that from? 23 A. Like scuttlebutt, but it came to me much 24 later even after the meeting at Frankford</p>	<p style="text-align: right;">123</p> <p>1 A. I'm not sure that she told me that. I know 2 that she told me specifically that she had talked to 3 Mrs. Dobrich. 4 Q. And what did she say, did she tell you the 5 substantiate of the conversation? 6 A. It was concerning how Mrs. Dobrich felt 7 about the issues of what went on during the 8 graduation. 9 Q. What did Mrs. Hobbs tell you that she told 10 Mrs. Dobrich? 11 A. Well, I don't know that she did tell me 12 what she told Mrs. Dobrich, she just had a 13 conversation with her. 14 Q. Did Mrs. Hobbs tell you how the 15 conversation ended up? 16 A. No. If she did, I don't remember. 17 Q. Did Mrs. Hobbs assure you that Mrs. Dobrich 18 was advised that she could speak to the Board about 19 this issue? 20 A. Not specifically I don't think she did. 21 Q. Did she tell you, that she Mrs. Hobbs 22 agreed to put the issue on the agenda for the Board 23 meeting? 24 A. I thought she did.</p>
<p style="text-align: right;">122</p> <p>1 Elementary. 2 Q. Tell me everything you recall about this 3 scuttlebutt? 4 A. That she had tried to do what, you know 5 that I had suggested that she do, and she didn't 6 feel that she was successful in getting it done. 7 Q. And who did you hear that from? 8 A. I'm not sure, I'm really not. 9 Q. Did you investigate whether that concern 10 was true, because you wouldn't like it if somebody 11 went to the central office and had difficulty 12 getting their issue on an agenda, would you? 13 A. Yes. 14 Q. You did investigate? 15 A. Yes. 16 Q. What did you find out? 17 A. I asked Mrs. Hobbs about it. 18 Q. What did she say? 19 A. She had told me that she had called her. 20 Q. Mrs. Dobrich had called her? 21 A. She said that I have talked to 22 Mrs. Dobrich. 23 Q. Yes, sir, and did she say that she had 24 agreed to put the issue on the agenda?</p>	<p style="text-align: right;">124</p> <p>1 Q. The next sentence of PX13, which is the 2 executive session minutes says, "It was not felt 3 that a decision could be made this evening regarding 4 whether or not to change our past practice." I take 5 it that it was not felt means it was not felt by the 6 Board members, correct? 7 A. Yes. 8 Q. And it was not felt that a decision could 9 be made this evening regarding whether or not to 10 change our past practice, what was it that the Board 11 members needed before they could make a decision 12 about whether or not to change their past practice? 13 A. Advice from an attorney. 14 Q. The minutes PX14 say that the purpose of 15 going into executive session which then lasted four 16 hours and 15 minutes, was to seek advice from our 17 legal counsel on this issue, right? 18 A. Yes. 19 Q. Was there something wrong with the four 20 hours and 15 minutes you had already gotten on the 21 issue? 22 A. I would say that it was like they wanted a 23 second opinion. 24 Q. And you say it was like they wanted a</p>

<p>125</p> <p>1 second opinion, is the they just generally the Board</p> <p>2 members, or was there a group that was urging that</p> <p>3 the Board get a second opinion?</p> <p>4 A. I would say it was the Board members.</p> <p>5 Q. All of them.</p> <p>6 A. I would say so.</p> <p>7 Q. Yes, sir.</p> <p>8 A. I don't have any first hand knowledge that</p> <p>9 anyone did not want that.</p> <p>10 Q. Can you think of any instance which the</p> <p>11 Board had in the past received advice from</p> <p>12 Mr. Griffin and then decided to get a second</p> <p>13 opinion?</p> <p>14 A. Yes.</p> <p>15 Q. Give me an example?</p> <p>16 A. I can't give you a specific example but it</p> <p>17 happens.</p> <p>18 Q. And is that because the Board doesn't like</p> <p>19 the advice that it gets from Mr. Griffin?</p> <p>20 MR. GOSSELIN: Objection.</p> <p>21 Q. You may answer.</p> <p>22 A. We may not agree with what he advised, yes</p> <p>23 that's true.</p> <p>24 Q. Is that what happened in this instance?</p>	<p>127</p> <p>1 MR. GOSSELIN: I don't know what</p> <p>2 kind of letter I'm going to get tomorrow</p> <p>3 and what you are going to be requesting,</p> <p>4 but I don't want there to be any argument</p> <p>5 that we have to give you, you know, written</p> <p>6 documents from Mr. Griffin or anybody else</p> <p>7 because somehow the attorney/client</p> <p>8 objection has been waived.</p> <p>9 I mean Mr. Bireley just gave an</p> <p>10 answer that I think it's -- I don't know if</p> <p>11 it was responsive to your question, if your</p> <p>12 question was intended to elicit that</p> <p>13 response I would have objected to it and</p> <p>14 instructed him not to answer, and I didn't,</p> <p>15 and I don't want that to be deemed by you</p> <p>16 as some sort of a waiver, because if so I</p> <p>17 think we can cut off the whole line of</p> <p>18 questioning generally.</p> <p>19 The judge issued an order here</p> <p>20 saying that we have to produce documents</p> <p>21 from the executive committee meetings to</p> <p>22 the extent that they don't implicate</p> <p>23 attorney/client privilege, that's why we</p> <p>24 gave that. And you know, it's difficult to</p>
<p>126</p> <p>1 A. I think so.</p> <p>2 MR. GOSSELIN: I don't want to</p> <p>3 interfere with your questioning here. I</p> <p>4 think that at least I thought your intent</p> <p>5 just to just sort of find out the process.</p> <p>6 I think you are starting to tread into</p> <p>7 territory where you are trying to get at</p> <p>8 what the advice was that Mr. Griffin gave,</p> <p>9 and obviously we object to that. I'm</p> <p>10 putting that out on the record because I</p> <p>11 want to just remind both you and the</p> <p>12 witness what we agreed were going to be the</p> <p>13 ground rules for this line of questioning.</p> <p>14 MR. ALLINGHAM: Yeah, it's a</p> <p>15 little bit delicate. The ground rule was</p> <p>16 that you and I would agree to disagree</p> <p>17 about whether I am entitled to ask</p> <p>18 questions about the substance of the</p> <p>19 advice. That you and I would agree that,</p> <p>20 and you would make the representation</p> <p>21 that if I asked the same questions I asked</p> <p>22 of Dr. Hattier, you would make the same</p> <p>23 instructions so I don't need to do it again</p> <p>24 with Mr. Bireley.</p>	<p>128</p> <p>1 find out exactly where the line is to be</p> <p>2 drawn in a case like this, and I think we</p> <p>3 have drawn it that you can get the general</p> <p>4 information about when the discussions took</p> <p>5 place, the overall subject matter of the</p> <p>6 discussions, but anything that goes to the</p> <p>7 specific substance of the discussions</p> <p>8 obviously I object to.</p> <p>9 MR. ALLINGHAM: I don't think it's</p> <p>10 necessary to take positions on a deposition</p> <p>11 record which take times of Mr. Bireley. I</p> <p>12 thought that had an agreement. I thought</p> <p>13 that we put our agreement on the record in</p> <p>14 this transcript, we will abide by that</p> <p>15 agreement. I'm going on keep asking</p> <p>16 questions that I think were not posed to</p> <p>17 Dr. Hattier. If I think that they are</p> <p>18 appropriate, and if they are questions that</p> <p>19 were not posed to Dr. Hattier it is our</p> <p>20 position that you are obligated to object,</p> <p>21 but the chips will fall where they may. We</p> <p>22 have whatever agreement we have.</p> <p>23 MR. GOSSELIN: Okay.</p> <p>24 MR. ALLINGHAM: Anticipating</p>

<p>145</p> <p>1 something that Christianity is the only religion, 2 you know or that's what I would consider to be a 3 violation of paragraph three. 4 Q. And you would not view the prayer that I 5 just had marked as PX35 as an example of what you 6 just described? 7 A. No. 8 Q. I'm correct am I not that it was your 9 intent as a Board member to adopt School Board 10 Prayer Policy that complied with existing applicable 11 law? 12 A. Yes. 13 Q. And in your, in casting your vote to adopt 14 that policy your belief that the policy that you 15 approved complied with applicable law was based in 16 part on Mr. Helms' report to you about 17 Mr. Neuberger's second opinion. I don't want to 18 know the substance of the opinion, I just want to 19 know if that was part of your consideration in 20 reaching a conclusion on that issue? 21 A. Probably so. 22 Q. All right, I have a third prayer for you to 23 consider. Heavenly Father, thank you for this great 24 occasion, for the work, the effort, the joys and</p>	<p>147</p> <p>1 Q. So, the critical distinction, Mr. Bireley 2 is whether the content of the prayer suggest that 3 the only true religion or the only way to heaven or 4 only way to truth is through a particular faith, or 5 a particular Deity or representation of an Deity, is 6 that correct? 7 MR. GOSSELIN: Objection. 8 Q. Is that the distinction that you are trying 9 to draw? 10 A. That the only way is through Jesus Christ. 11 Q. Or presumably the way through Muhammad 12 or -- 13 A. Okay, I'm sorry, yes, some other. 14 Q. And so long as a prayer doesn't say that 15 the only true way is through a particular Deity or a 16 particular faith you would find the prayer 17 nonproselytizing and not violative of paragraph 18 three? 19 MR. GOSSELIN: Objection. 20 A. Yes, in my opinion. 21 Q. We were informed in an interrogatory answer 22 that you a Methodist, is that correct? 23 A. Yes. 24 Q. And do you attend church?</p>
<p>146</p> <p>1 everything that led up to this point in time. Thank 2 you for your guidance in this event. We pray for 3 your direction in the lives of each of those in 4 attendance. We pray that you direct them into the 5 truth, and eventually the truth that comes by 6 knowing Jesus. We pray that you would be with them 7 now. We ask these things in Jesus's name. Amen. 8 MR. GOSSELIN: Objection. 9 Q. As a Board member would view that prayer as 10 a proselytizing prayer? 11 A. Yes. 12 Q. And describe for me as well as you can the 13 difference between this third prayer that I read and 14 the first two that you as a Board member would 15 consider nonproselytizing? 16 A. My personal opinion what you just read, 17 they are basically saying that the only way through 18 to heaven or to God is through Jesus Christ. I 19 think that's the difference. 20 In other words, in that prayer you are 21 saying, they are saying that that's the only way, if 22 I am hearing it correctly. And I didn't think that 23 I interpreted that from the first two that that's 24 what it said.</p>	<p>148</p> <p>1 A. Once in a while. 2 Q. What church do you attend? 3 A. My wife's church if I go. 4 Q. Which church is that? 5 A. Bethel Methodist in Dagsboro. 6 Q. Would you characterize yourself as a person 7 who attends on big religious holidays, but not every 8 Sunday? 9 A. I'm not sure that the big religious 10 holidays. Once in a while, I would say once in a 11 while I do. Not just that church but I go to, I 12 have had occasions to go to other churches, too. 13 But I'm not a every Sunday attendee, if that's what 14 you are asking me, I'm not. 15 Q. On the other hand you would consider 16 yourself a practicing Christian? 17 A. I try to. I try to do what's right and I 18 mean I am aware of what the teachings say is right 19 and I try to do that. 20 Q. In order to be a practicing Christian do 21 you consider it necessary to attend church on 22 Easter, for example? 23 A. No. 24 Q. Or to attend church on Christmas?</p>

<p>173</p> <p>1 with a moment of silence?</p> <p>2 A. Well --</p> <p>3 MR. GOSSELIN: To the extent that</p> <p>4 this is not based on information obtained</p> <p>5 from counsel.</p> <p>6 A. Okay, this would be from individual Board</p> <p>7 members?</p> <p>8 Q. Yes, sir?</p> <p>9 A. It was suggested and was discussed and they</p> <p>10 decided not to do it because they still thought that</p> <p>11 each individual Board member had the right to say</p> <p>12 whatever they wanted to say in their moment of the</p> <p>13 time that they give a prayer.</p> <p>14 Q. Did somebody say look if we just open the</p> <p>15 meeting with a moment of silence it is not going to</p> <p>16 be seeking divine guidance for our decisions at the</p> <p>17 Board meeting?</p> <p>18 A. I don't recall that being said. I don't</p> <p>19 recall anybody saying that.</p> <p>20 Q. The policy itself contemplates, if you look</p> <p>21 at PX9, sir that the Board of Education may choose</p> <p>22 to open its meeting with a moment of silence, right?</p> <p>23 A. Yes.</p> <p>24 Q. And so am I correct that the policy itself</p>	<p>175</p> <p>1 A. I guess that's a fair statement.</p> <p>2 Q. Was a reason for the adoption of this</p> <p>3 policy to protect individual Board members' First</p> <p>4 Amendment rights to express their religion as they</p> <p>5 see fit?</p> <p>6 MR. GOSSELIN: Objection.</p> <p>7 A. I will agree.</p> <p>8 Q. Did anybody give any consideration to</p> <p>9 calling this policy the policy to protect individual</p> <p>10 Board members First Amendment rights?</p> <p>11 A. No, not that I recall.</p> <p>12 Q. Do you know why the title of the policy was</p> <p>13 changed from Policy on Prayer at Board Meetings,</p> <p>14 which is what the first Rutherford Institute</p> <p>15 document that Mr. Helms passed to you to Board</p> <p>16 Prayer at Regular Board Meetings?</p> <p>17 A. The only thing I can recall in particular I</p> <p>18 remember someone asking the question that was the</p> <p>19 only time that we did it, and it was stated at</p> <p>20 regular Board meetings because we didn't do it at</p> <p>21 any other type of meetings.</p> <p>22 Q. Got you. That's not because Board members</p> <p>23 didn't think they could equally use divine guidance</p> <p>24 at special Board meetings that you never had done</p>
<p>174</p> <p>1 contemplates that moment of silence would be</p> <p>2 effective to solemnify the proceedings?</p> <p>3 A. In some people's mind, yes.</p> <p>4 Q. And the policy itself contemplate that it</p> <p>5 would be effective to solemnify the proceedings by</p> <p>6 opening with a moment of silence, is that correct?</p> <p>7 A. What the policy says?</p> <p>8 Q. Yes, sir. Did anyone raise the question if</p> <p>9 as the policy reflects being a moment of silence</p> <p>10 would be effective to solemnify the proceedings why</p> <p>11 it was necessary also to offer the option to</p> <p>12 individual Board members to open the meetings with a</p> <p>13 prayer?</p> <p>14 A. The discussion that I remember what that</p> <p>15 it's an individual's choice.</p> <p>16 Q. Was the inclusion in the Board Prayer</p> <p>17 Policy of the option to open its meeting with a</p> <p>18 prayer intended to protect individual Board members'</p> <p>19 rights to express their religion as they saw fit?</p> <p>20 MR. GOSSELIN: Objection to the</p> <p>21 form.</p> <p>22 A. To prevent them from doing it?</p> <p>23 Q. To protect their rights to express their</p> <p>24 religion as they saw fit?</p>	<p>176</p> <p>1 it?</p> <p>2 A. I guess that's true.</p> <p>3 Q. So, as far as you were able to tell Board</p> <p>4 members did think they needed divine guidance for</p> <p>5 special Board and regular Board meetings?</p> <p>6 A. Yes.</p> <p>7 MR. GOSSELIN: And everywhere</p> <p>8 else.</p> <p>9 Q. In the Board School Board Prayer Policy we</p> <p>10 talked a little bit about how you as the president</p> <p>11 set up the rotating basis, I have a few more</p> <p>12 questions on that.</p> <p>13 As things stand now in your service as the</p> <p>14 Board president, is it correct that you don't on a</p> <p>15 rotating basis offer each Board member the</p> <p>16 opportunity to offer a prayer to open the meeting?</p> <p>17 A. I just offer it to the people who have</p> <p>18 indicated to me that they are willing to do it.</p> <p>19 Q. Would it be fair for me to understand that</p> <p>20 the selection process is done in advance with the</p> <p>21 offer extended only to the, the invitation extended</p> <p>22 to Board members who have previously volunteered to</p> <p>23 participate in this process?</p> <p>24 A. If the other Board members has not</p>

<p style="text-align: right;">181</p> <p>1 Q. When Mr. Walls was on the Board if you had 2 extended an invitation to Mr. Walls you know that he 3 would have declined that invitation, isn't that 4 correct? 5 A. Based on the fact that I had asked him 6 previous was he willing to do it and he declined, 7 yes. 8 Q. Don't you think that the public is entitled 9 to know that some School Board members think it's 10 great to open School Board meeting with a prayer and 11 some School Board members don't? 12 A. I've had people ask me why I don't do it. 13 Q. Don't you think that the public is entitled 14 to see publicly that some Board members take up the 15 invitation and some Board members decline the 16 invitation? 17 MR. GOSSELIN: Objection. 18 A. If they come to the Board meetings, you 19 know, if people come to the Board meetings they are 20 going to see that anyway, they are going to know. 21 Q. How are they going to know, sir? 22 A. By observance. They are going to see that 23 there is only a select amount of people that choose 24 to do this.</p>	<p style="text-align: right;">183</p> <p>1 not choose to do so and they said or they chose not 2 to do it, then yes, they would, anyone who was there 3 in attendance would know. 4 Q. And the reason you chose to figure out in 5 advance who would accept your invitation is that you 6 didn't want to embarrass the folks whose didn't 7 want, as a personal preference, to participate in 8 that process, isn't that right? 9 MR. GOSSELIN: Objection. 10 A. Yeah, embarrass them or put them on the 11 spot, yeah, when I already knew the answer. 12 Q. Because you didn't want them to have to say 13 in public I prefer not to lead the Board in prayer? 14 MR. GOSSELIN: Objection. 15 A. Well, I guess yes. 16 Q. Why was the rotating basis incorporated in 17 this policy, do you know? 18 A. Other than the fact that that was what came 19 to us to be approved. 20 Q. From the Rutherford Institute? 21 A. Well, from the committee. I'm not sure who 22 put that in there, whether the Rutherford Institute 23 recommended it or whether our own people in this 24 district did it Mr. Walls I'm not sure who did it.</p>
<p style="text-align: right;">182</p> <p>1 Q. Do you think people keep track of which 2 Board member gave the prayer? 3 A. I don't know if the others struggle with 4 doing it as much as I do, I don't know the answer. 5 Q. Well, it's your job and you keep a piece of 6 paper, people don't keep in their minds -- 7 A. I agree with that. 8 Q. Okay, so there is no way for people to know 9 that on the current Board six of the ten Board 10 members have indicated an unwillingness to offer a 11 prayer? 12 MR. GOSSELIN: Objection. 13 A. I'd like to say it was a personal 14 preference. 15 Q. Indicated a personal preference not to have 16 an invitation extended to them to offer a prayer? 17 A. Yes. 18 Q. There is no way for the public to know 19 that? 20 A. I guess not. 21 Q. If you followed the policy as written, the 22 public would know that, isn't that correct? 23 MR. GOSSELIN: Objection. 24 A. If I called on someone that I knew that did</p>	<p style="text-align: right;">184</p> <p>1 Q. Did you ask where it came from? 2 A. No, I do not. 3 Q. Did you ask why it was included? 4 A. No. 5 Q. Did any Board member ask where it came 6 from? 7 A. Not that I'm aware of. 8 Q. Did any Board member ask why it was 9 included? 10 A. Not that I'm aware of. 11 Q. It was included for no reason, correct? 12 You don't put in surplusage, or put in things that 13 have no purpose? 14 A. True. 15 Q. So, it has a purpose but you don't know 16 what it is? 17 MR. GOSSELIN: Objection. 18 A. Yes. 19 Q. And you don't comply with it? 20 MR. GOSSELIN: Objection. 21 A. I don't comply with it? 22 Q. You don't do what the policy says you 23 should do? 24 MR. GOSSELIN: Objection.</p>

<p>193</p> <p>1 Q. Oh, that's not what I said. I didn't say</p> <p>2 did you make it an issue, I said was it your view</p> <p>3 the prayer suit facing the district and the Board</p> <p>4 the major issue surrounding this year's election</p> <p>5 which probably swung this year's vote?</p> <p>6 A. I don't think I said that, not in the</p> <p>7 context like that.</p> <p>8 Q. Well, in what context did you say it?</p> <p>9 A. I agreed with him when he asked me the</p> <p>10 question, did I think it was an important thing</p> <p>11 because people in the community made it an important</p> <p>12 thing. I never did it, when I was campaigning or</p> <p>13 anything. No, I did not make this the issue.</p> <p>14 Q. Okay, so whether or not you made it the</p> <p>15 issue, it became the major issue in the campaign?</p> <p>16 A. I don't know that it became a major issue,</p> <p>17 it became an issue in the campaign.</p> <p>18 Q. Whether or not you made it an issue was it</p> <p>19 your view that it probably swung the vote?</p> <p>20 A. I have no way of knowing that.</p> <p>21 Q. Well, did you tell Mr. Bireley that you</p> <p>22 thought it probably swung the vote?</p> <p>23 MR. GOSSELIN: You mean Mr.</p> <p>24 Starkey.</p>	<p>195</p> <p>1 Q. If someone else raised the issue did you</p> <p>2 respond as to what your position was?</p> <p>3 A. Yes.</p> <p>4 Q. You did respond to questions from</p> <p>5 Mr. Gaffney during that campaign interview on the</p> <p>6 School Board prayer issue?</p> <p>7 A. On the radio?</p> <p>8 Q. Yes.</p> <p>9 A. Yes.</p> <p>10 MR. ALLINGHAM: Let's mark as PX39</p> <p>11 a document bearing Bates numbers P2640.</p> <p>12 (WHEREUPON Plaintiff's Exhibit 39</p> <p>13 was marked for identification.)</p> <p>14 Q. This is an article from the Sussex Post</p> <p>15 from the Thursday July 6, 2006 issue written by</p> <p>16 James Diehl. Did you give an interview to Mr. Diehl</p> <p>17 in connection with this article?</p> <p>18 A. I'm not sure.</p> <p>19 MR. GOSSELIN: I haven't read this</p> <p>20 article, can you give me a minute to read</p> <p>21 it myself because I may object to any</p> <p>22 questions relating to the article. I think</p> <p>23 I'm going to object to your substantive</p> <p>24 questions but I suppose I will wait until</p>
<p>194</p> <p>1 Q. Mr. Starkey, sorry.</p> <p>2 MR. GOSSELIN: Objection.</p> <p>3 A. I don't think that I did.</p> <p>4 Q. Three paragraphs below that Mr. Starkey</p> <p>5 quotes you directly, "That's the issue Bireley said</p> <p>6 of the District four campaign. They approved of</p> <p>7 what we did back on February 28th. It became a</p> <p>8 campaign issue." Is that an accurate quote of what</p> <p>9 you told Mr. Starkey?</p> <p>10 A. Pretty much it did become a campaign issue.</p> <p>11 Q. Just don't know whether it swung the vote?</p> <p>12 A. I have no way of knowing --</p> <p>13 Q. Did --</p> <p>14 MR. GOSSELIN: You interrupted</p> <p>15 him are you done?</p> <p>16 A. I started to say that it didn't come from</p> <p>17 me, in anything that I ever wrote to anyone I never</p> <p>18 said that this was, you know, the major issue or</p> <p>19 whatever, that I can recall doing.</p> <p>20 Q. Did you raise it as an issue in the</p> <p>21 campaign?</p> <p>22 A. Did I raise it as an issue?</p> <p>23 Q. Yes.</p> <p>24 A. No, not me personally.</p>	<p>196</p> <p>1 you ask them.</p> <p>2 MR. ALLINGHAM: Good idea.</p> <p>3 Q. In the fourth column of the first portion</p> <p>4 of the article, the top portion of the article the</p> <p>5 second full paragraph incorporates a quote from you</p> <p>6 and it has a lead in paragraph which I also want to</p> <p>7 read. "Most provisions were made in response to</p> <p>8 recent court decisions according to Mr. Bireley. As</p> <p>9 long as a student is not coerced, then they're</p> <p>10 allowed to speak" I don't know what he was changing</p> <p>11 from.</p> <p>12 MR. GOSSELIN: Where are you</p> <p>13 reading from?</p> <p>14 MR. ALLINGHAM: It's the fourth</p> <p>15 column top of the page.</p> <p>16 MR. GOSSELIN: Okay.</p> <p>17 Q. "As long as a student is not coerced then</p> <p>18 they are allowed to speak Mr. Bireley said. We</p> <p>19 adopted this on our own." My question to you is</p> <p>20 what do you mean when you say we adopted this on our</p> <p>21 own?</p> <p>22 MR. GOSSELIN: Objection, don't</p> <p>23 answer that.</p> <p>24 Q. Is the antecedent, is what you are</p>

<p>201</p> <p>1 Fike in that quotation?</p> <p>2 MR. GOSSELIN: Objection,</p> <p>3 don't answer that.</p> <p>4 MR. ALLINGHAM: The personal</p> <p>5 religious beliefs of the individual Board</p> <p>6 members who adopted the policy are plainly</p> <p>7 relevant under case law. Do you want to</p> <p>8 reconsider your instruction?</p> <p>9 MR. GOSSELIN: The judge told</p> <p>10 you -- I'm going to -- if you want me to</p> <p>11 tell you why I'm objecting or you don't.</p> <p>12 MR. ALLINGHAM: I just asked</p> <p>13 whether you would reconsider in light of</p> <p>14 what I just said.</p> <p>15 MR. GOSSELIN: No.</p> <p>16 Q. In the next paragraph of the article</p> <p>17 reports, "School Board members Bireley and Hattier</p> <p>18 rather than forcing what they think on other people,</p> <p>19 see themselves as defending the values of Sussex</p> <p>20 County. They see themselves as protecting what</p> <p>21 Hattier, who moved here in 1986, calls one of the</p> <p>22 last great communities with rural attitudes in the</p> <p>23 country."</p> <p>24 In adopting the School Board Prayer Polity</p>	<p>203</p> <p>1 Q. Did you visit the Harrison Senior Living</p> <p>2 Center in Georgetown, Delaware and Green Valley</p> <p>3 Terrace in Millsboro, Delaware as part of your</p> <p>4 re-election campaign for the School Board in 2006?</p> <p>5 A. Did I?</p> <p>6 Q. Yes.</p> <p>7 A. No.</p> <p>8 Q. Did anyone visit those centers on your</p> <p>9 behalf?</p> <p>10 A. Not that I'm aware of.</p> <p>11 MR. ALLINGHAM: All right let's go</p> <p>12 off the record for five minutes. I think</p> <p>13 I'm done but I want to check with my</p> <p>14 colleagues.</p> <p>15 MS. DUPHILY: We are going off the</p> <p>16 record at approximately 2:54 p.m..</p> <p>17 (WHEREUPON a brief recess was</p> <p>18 taken)</p> <p>19 MS. DUPHILY: Back on the record</p> <p>20 at approximately 2:58 p.m..</p> <p>21 Q. Do you believe that students in the</p> <p>22 district are impressionable because of their youth?</p> <p>23 A. My personal opinion?</p> <p>24 Q. Yes.</p>
<p>202</p> <p>1 did you consider yourself as defending the values of</p> <p>2 Sussex County?</p> <p>3 MR. GOSSELIN: Objection.</p> <p>4 Q. You may answer.</p> <p>5 A. Not in this context, no.</p> <p>6 Q. Did you see yourself as defending one of</p> <p>7 the last great communities with rural attitudes in</p> <p>8 this country?</p> <p>9 MR. GOSSELIN: Objection.</p> <p>10 A. No.</p> <p>11 Q. Did you speak to Dr. Hattier last night?</p> <p>12 A. Yes.</p> <p>13 Q. Did you discuss with him what he was asked</p> <p>14 during the deposition?</p> <p>15 A. He made some statements to me, that's not</p> <p>16 the purpose of the call.</p> <p>17 Q. What did he tell you about the deposition?</p> <p>18 A. What did he tell me?</p> <p>19 Q. Yes.</p> <p>20 A. That, well, that I should be polite, that I</p> <p>21 should respect the other side, that I should do</p> <p>22 something that I made a boo boo already is wait for</p> <p>23 you to ask the complete question before I answer,</p> <p>24 things like that.</p>	<p>204</p> <p>1 A. Yes.</p> <p>2 Q. In PX30 which I put before you a few</p> <p>3 moments ago, Mr. Gosselin and I had an exchange</p> <p>4 about whether a question relating to your personal</p> <p>5 religious views was relevant. I understand that for</p> <p>6 reasons expressed by Mr. Gosselin that he is</p> <p>7 withdrawing his instruction to you not to answer</p> <p>8 that question, so let me repose it.</p> <p>9 In the Delaware Beach Life article marked</p> <p>10 PX30, the Reverend Jerry Fike, who by the way is the</p> <p>11 minister who offered the commencement prayers in</p> <p>12 2004, is that correct?</p> <p>13 A. Yes.</p> <p>14 Q. At the Board's invitation?</p> <p>15 A. Yes, well, not at the Board's invitation.</p> <p>16 Q. Who invited the Reverend Fike to deliver</p> <p>17 the commencement --</p> <p>18 MR. GOSSELIN: I object to that</p> <p>19 and instruct him not to answer, because we</p> <p>20 are getting off topic. You wanted his</p> <p>21 personal views.</p> <p>22 Q. Is it within the Board's responsibility to</p> <p>23 invite speakers to district events such as</p> <p>24 commencement exercises?</p>

<p style="text-align: right;">213</p> <p>1 he reacting to something on the record that</p> <p>2 isn't in the record.</p> <p>3 MR. ALLINGHAM: All right, I</p> <p>4 will mark as an exhibit the CD that</p> <p>5 contains, the DVD that contains this video</p> <p>6 at the conclusion of this line of</p> <p>7 questioning. We will also identify the</p> <p>8 time when this video is started playing</p> <p>9 and is finished playing, and I will ask and</p> <p>10 I can do this now, who it is that is the</p> <p>11 public speaker at the time so we have a</p> <p>12 cross check about what portion of the</p> <p>13 meeting we are showing Mr. Bireley.</p> <p>14 MR. GOSSELIN: Okay.</p> <p>15 MR. ALLINGHAM: All right, I think</p> <p>16 that will provide a record that can be</p> <p>17 reproduced for anyone who wants to see it</p> <p>18 of what it is that Mr. Bireley was watching</p> <p>19 when, prior to the time that I asked him</p> <p>20 questions.</p> <p>21 MR. GOSSELIN: That's fine, and</p> <p>22 I'm not saying that we wouldn't been able</p> <p>23 to do that otherwise, I just would like to</p> <p>24 know if it's not being taken down.</p>	<p style="text-align: right;">215</p> <p>1 A. No.</p> <p>2 (AT THIS POINT A DVD WAS PLAYED)</p> <p>3 Q. Do you know how long Mr. Johnson spoke</p> <p>4 before someone mentioned to him that his time was</p> <p>5 up?</p> <p>6 A. No.</p> <p>7 Q. Do you know how much longer Mr. Johnson</p> <p>8 spoke after someone told him that his time was up?</p> <p>9 A. No.</p> <p>10 Q. Do you think how long Mr. Johnson spoke had</p> <p>11 anything to do with the substance of his remarks?</p> <p>12 MR. GOSSELIN: Objection.</p> <p>13 A. I really can't answer that.</p> <p>14 Q. Well, let me ask you this question did you</p> <p>15 understand the reference Madelyn Murray-O'Hare to be</p> <p>16 a threat against Mrs. Dobrich?</p> <p>17 A. I don't know that I thought that that was a</p> <p>18 threat. I'm familiar with Madelyn Murray-O'Hare, I</p> <p>19 mean I know the situation, who she was and all that,</p> <p>20 but I don't know that he was using that as a threat</p> <p>21 against her, I hope not.</p> <p>22 Q. What was the purpose of raising Madelyn</p> <p>23 Murray-O'Hare and her disappearance after raising</p> <p>24 School Board prayer issues if not to threaten Mrs.</p>
<p style="text-align: right;">214</p> <p>1 MR. ALLINGHAM: Now, having said</p> <p>2 that, if the reporter wants the public</p> <p>3 statement that is being made on this tape,</p> <p>4 can take down what is being said, that</p> <p>5 would be helpful as well, but if you can't</p> <p>6 you can't. I think it's pretty clear</p> <p>7 actually, but we will see.</p> <p>8 Q. Before we start the video again, do you</p> <p>9 recognize the person who is standing to make a</p> <p>10 comment during the public comment session of the</p> <p>11 August 24 meeting?</p> <p>12 A. Yes.</p> <p>13 Q. Who is it?</p> <p>14 A. Harold Johnson.</p> <p>15 Q. Do you know who Mr. Johnson is?</p> <p>16 A. He used to be a School Board member.</p> <p>17 Q. Did he serve with you on the School Board?</p> <p>18 A. Yes.</p> <p>19 Q. For many years?</p> <p>20 A. Five, six, seven, eight, somewhere in that</p> <p>21 neighborhood.</p> <p>22 Q. Had you spoken to Mr. Johnson before the</p> <p>23 August 24th meeting about his intention to speak at</p> <p>24 the meeting?</p>	<p style="text-align: right;">216</p> <p>1 Dobrich?</p> <p>2 MR. GOSSELIN: Objection.</p> <p>3 Q. Do you have any idea what the purpose might</p> <p>4 have been?</p> <p>5 A. No.</p> <p>6 MR. GOSSELIN: Objection.</p> <p>7 Q. Did you think it was inappropriate for</p> <p>8 Mr. Johnson to raise the issue of Madelyn</p> <p>9 Murray-O'Hare in the charged atmosphere that you</p> <p>10 heard at that Board meeting?</p> <p>11 MR. GOSSELIN: Objection.</p> <p>12 A. It wouldn't have been something that I</p> <p>13 would have done.</p> <p>14 Q. If you had been the School Board president</p> <p>15 and you had heard that would you have banged your</p> <p>16 gavel and said I'm sorry, I'm sorry in order to</p> <p>17 maintain order at this meeting I'm going to have to</p> <p>18 ask you to leave the podium?</p> <p>19 MR. GOSSELIN: Objection.</p> <p>20 A. Would I?</p> <p>21 Q. Yes.</p> <p>22 A. Yes.</p> <p>23 Q. And that was the right thing to do, isn't</p> <p>24 it?</p>

EXHIBIT 2

<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE DISTRICT OF DELAWARE 3 4 MONA DOBRICH and MARCO DOBRICH, individually And as parents and next friend of ALEXANDER 5 DOBRICH, SAMANTHA DOBRICH, JANE DOE and JOHN DOE, individually and as parents and next friend 6 of JORDAN DOE and JAMIE DOE, 7 Plaintiffs 8 vs. Civil Action Case No. 15-120 9 10 INDIAN RIVER SCHOOL DISTRICT, ET AL., 11 Defendants 12 13 DEPOSITION OF NINA LOU BUNTING, taken pursuant to notice at the Indian River School District, 31 Hosier Street, Selbyville, Delaware, 14 beginning at 9:07 a.m. on October 13, 2006 before David A. Sroka, Registered Professional Reporter and 15 Notary Public. 16 17 APPEARANCES: 18 THOMAS ALLINGHAM, ESQ. RICHARD HORVATH BRIAN LENHARD 19 P.O. Box 636 Wilmington, Delaware 19899-0636 20 For the Plaintiffs 21 JARROD D. SHAW, ESQ. Drinker Biddle & Reath, LLP 22 One Logan Square Philadelphia, Pennsylvania 19103-6996 23 For the Defendants 24</p>	<p>3 1 The Witness herein, called for examination by 2 the Plaintiffs, having been duly sworn to tell the 3 truth, the whole truth, and nothing but the truth, 4 was examined and testified as follows: 5 EXAMINATION BY MR. ALLINGHAM: 6 Q. Did you attend the August 24, 2004 Board 7 meeting? 8 A. August 24, 2004 Board meeting, are you 9 referring to the one where the public, a lot of 10 people from the public came? 11 Q. Hundreds of people? 12 A. Okay, yes, I did. 13 Q. Did anything occur at that meeting that was 14 disturbing to you personally? 15 A. No. 16 Q. I want to show you a clip of the video from 17 that meeting? 18 A. Okay. 19 Q. This is a portion from the public comment 20 section of the meeting. 21 A. Okay. 22 (AT THIS POINT IN TIME A TAPE WAS PLAYED) 23 Q. Were you distracted when your telephone 24 rang during that clip? Would you like me to play it</p>
<p>2 1 MS. DUPHILY: This is the 2 videotape deposition of Ms. Nina Lou 3 Bunting taken by the Plaintiff in the 4 matter of Dobrich, et al. versus Indian 5 River School District, et al., case number 6 15-120. We are going on the record at 31 7 Hosier Boulevard, Selbyville, Delaware 8 on October 12, 2006 at approximately 12:55 9 p.m.. 10 The court reporter is Dave Sroka 11 from the firm of Wilcox & Felzer, 12 Wilmington, Delaware. My name is 13 Lindsay duPhily and I'm the videotape 14 specialist of Discovery Video Services. 15 Counsel will now introduce 16 themselves and then the court reporter 17 will swear in the witness. 18 MR. ALLINGHAM: I'm Tom Allingham 19 I represent the Plaintiffs in this 20 case, and with me are Richard Horvath and 21 Brian Lenhard. 22 MR. SHAW: I'm Jarrod Shaw and I 23 represent the defendants in this action. 24 NINA LOU BUNTING,</p>	<p>4 1 again for you? 2 A. No, I don't think I was distracted. I may 3 have been momentarily. 4 Q. Were you present when -- who was speaking 5 during that public comment section? 6 A. Mr. Harold Short. 7 Q. Harold Johnson? 8 A. Harold Johnson, okay. I don't know him 9 that well. I knew it was Harold somebody. 10 Q. Were you present when he made that 11 statement? 12 A. Yes, I was. 13 Q. Did you hear him say that the good Lord has 14 proven that there's a higher power above our Supreme 15 Court? 16 A. I guess I heard him say it. I didn't hang 17 on every word. 18 Q. Did you hear him say that was proven when 19 the last I heard Madelyn Murray-O'Hare disappeared 20 never to be seen again? 21 A. Well, I heard it just now, do I remember -- 22 Q. that's the first time that you heard it? 23 A. I'm sure I heard it that night, but I 24 didn't remember hearing it until you showed me</p>

<p style="text-align: right;">49</p> <p>1 Q. How would you go about analyzing?</p> <p>2 A. Making sure that we didn't do that, you</p> <p>3 mean?</p> <p>4 Q. Yes, ma'am?</p> <p>5 A. Well, I know when I give the prayer it is</p> <p>6 just talking about our staff and students, and about</p> <p>7 our own decision making. It does not involve</p> <p>8 anything or anybody else.</p> <p>9 Q. Maybe a better way to go about it would be</p> <p>10 to give you some examples of prayers and ask you</p> <p>11 whether you think those prayers would violate</p> <p>12 paragraph three of the limitations --</p> <p>13 A. Okay.</p> <p>14 Q. -- that are in there. So, I'm going to</p> <p>15 show you, I'm going to show you two prayers and the</p> <p>16 third one is short and I think I can just read it</p> <p>17 into the record for you. Your counsel is getting</p> <p>18 PX35. I</p> <p>19 I'm going to read it, Mrs. Bunting, but it</p> <p>20 might help you to follow along as I read?</p> <p>21 A. Okay.</p> <p>22 Q. "Do not put your trust in princes, in</p> <p>23 mortal men who cannot even save themselves. When</p> <p>24 their spirit departs they return to the ground. On</p>	<p style="text-align: right;">51</p> <p>1 written.</p> <p>2 I know Dr. Hattier likes to give prayers by</p> <p>3 famous people. So, if one of our Board members were</p> <p>4 quoting some famous prayer then I would feel that it</p> <p>5 would be appropriate in that way. Are you asking</p> <p>6 me, you are not asking me would I give this?</p> <p>7 Q. No, I asked you whether if one of your</p> <p>8 colleagues gave this would you say to yourself, gee</p> <p>9 I don't think that's permissible under paragraph</p> <p>10 three of our policy, or would you conclude that it</p> <p>11 was okay under the policy?</p> <p>12 A. I would say that I would wish they didn't</p> <p>13 give it, if they had written it.</p> <p>14 Q. And why is that?</p> <p>15 A. Because I think it's a bit sermonizing, but</p> <p>16 if they were quoting something that historically had</p> <p>17 been said publicly before, like one of our</p> <p>18 presidents or something, somebody like that, then --</p> <p>19 and it was not of their authorship, then I would be</p> <p>20 okay with it.</p> <p>21 Q. That's helpful, that's a good explanation</p> <p>22 of how you'd go about it. If -- there may be a</p> <p>23 third possibility which is that the Board member</p> <p>24 didn't write it, it was not a historical prayer such</p>
<p style="text-align: right;">50</p> <p>1 that very day their plans come to nothing. Blessed</p> <p>2 is he whose help is the God of Jacob, whose hope is</p> <p>3 in the Lord his God the maker of heaven and earth,</p> <p>4 the sea and everything in them. The Lord who</p> <p>5 remains faithful forever.</p> <p>6 He upholds the cause of the oppressed and</p> <p>7 gives food to the hungry. The Lord sets prisoners</p> <p>8 free. The Lord gives sight to the blind. The Lord</p> <p>9 lifts up those who are bowed down. The Lord loves</p> <p>10 the righteous. The Lord watches over the alien and</p> <p>11 sustains the fatherless and the widow, but he</p> <p>12 frustrates the ways of the wicked. For the wages of</p> <p>13 sin is death, but the gift of God is eternal life</p> <p>14 through Jesus Christ our Lord."</p> <p>15 If one of your colleagues gave that prayer</p> <p>16 in response to Mr. Bireley's offer of the</p> <p>17 opportunity to do so, would you believe that that</p> <p>18 prayer is permitted by paragraph three or prohibited</p> <p>19 by paragraph three?</p> <p>20 A. Let me look at paragraph three again. I</p> <p>21 think it would depend, sir, and I'm not trying to be</p> <p>22 evasive. I think it would depend on whether or not</p> <p>23 our Board member actually wrote this prayer, or</p> <p>24 whether they were giving one that had already been</p>	<p style="text-align: right;">52</p> <p>1 as Dr. Hattier sometimes gives. Let me step back.</p> <p>2 Dr. Hattier sometimes has given a prayer that George</p> <p>3 Washington gave, for example?</p> <p>4 A. Yes.</p> <p>5 Q. You already testified that when you offer</p> <p>6 your prayer you offer a prayer in your own words and</p> <p>7 you just address the decisions that you have to make</p> <p>8 that night and the personnel of the district and the</p> <p>9 students, I guess, right?</p> <p>10 This one is not, in my question to you,</p> <p>11 this one is not the words of the Board member, your</p> <p>12 colleague, it is not a historical prayer of George</p> <p>13 Washington or some other historical figure, it is</p> <p>14 taken from scripture, it is specifically taken from</p> <p>15 Psalms and Romans of the King James Bible.</p> <p>16 A. Okay.</p> <p>17 Q. So, my question to you is, with that</p> <p>18 additional information would you view this as</p> <p>19 sermonizing or would you view it as perfectly okay</p> <p>20 under paragraph three?</p> <p>21 A. Under paragraph three, at a Board meeting,</p> <p>22 among the ten of us I would not expect anyone to</p> <p>23 give this type of prayer, okay?</p> <p>24 Q. Yes, ma'am?</p>

<p>53</p> <p>1 A. Now, are you asking me if I think it would 2 be okay for them to?</p> <p>3 Q. I am going to do it in two pieces, okay?</p> <p>4 The first piece which you have just given me is that 5 you would not expect anyone to give this type of 6 prayer?</p> <p>7 A. No.</p> <p>8 Q. And is the reason why you would expect that 9 this prayer would not be given because you view it, 10 it's content as sermonizing?</p> <p>11 A. Well, it's not just that I view it as 12 sermonizing, I view it as not dealing with what we 13 have at had as a Board.</p> <p>14 Q. Yes, ma'am.</p> <p>15 A. Okay.</p> <p>16 Q. Not relevant?</p> <p>17 A. Not relevant to our decision making for the 18 evening's, you know, meeting.</p> <p>19 Q. And just to tie that loop, in your prayers 20 you try to link up the prayer to the decisions that 21 you are actually going to have to make?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Now, let me go to the second 24 question which you started to think about.</p>	<p>55</p> <p>1 think that's what paragraph three means, which is 2 not our intent.</p> <p>3 Q. Okay. And in looking at the prayer I've 4 given which is marked as Plaintiff's Exhibit 35, do 5 you think that this prayer is preachy or evangelical 6 or sermonizing in a way that would be prohibited by 7 paragraph three?</p> <p>8 A. I think more so inappropriate. I guess 9 technically, yes.</p> <p>10 Q. Okay. I'm going to give you, I'm actually 11 going to ready you a second prayer?</p> <p>12 A. Okay.</p> <p>13 Q. Assuming I can find it. While I'm looking 14 I will give you a second prayer, okay?</p> <p>15 A. Okay.</p> <p>16 Q. This is PX45. I'm going to read, you 17 should follow along --</p> <p>18 A. Okay.</p> <p>19 Q. -- with it. "Heavenly Father thank you for 20 this great occasion. For the work, the effort, the 21 joys and everything that led up to this point in 22 time. Thank you for your guidance in this event. 23 We pray for your direction in the lives of each of 24 these School Board members. We pray that you direct</p>
<p>54</p> <p>1 Accepting that you would not expect any of your 2 colleagues to offer this prayer for the reasons that 3 you've given, if they did so, would you think that 4 it would violate paragraph three of your policy?</p> <p>5 A. I'm going to say possibly, without, you 6 know, getting into it, every sentence, every word 7 every -- possibly it could.</p> <p>8 Q. Can you describe for me how you arrived at 9 that conclusion, and I know it's a tentative 10 conclusion?</p> <p>11 A. Well, again it just talking generally about 12 what the Lord does for all of us, or for those who 13 believe. Again the reason being it doesn't have 14 anything to do with what we're doing that night in 15 our decision making. I think it's more that it's 16 not appropriate.</p> <p>17 Q. And is your view that paragraph three is 18 intended to capture that notion of what's 19 appropriate and what's not appropriate for your 20 decision making process?</p> <p>21 A. I think paragraph three is to make sure 22 that we are not being evangelists, that we are not 23 being like when you would go to a revival or 24 something, that we are not, we are not preaching. I</p>	<p>56</p> <p>1 them into the truth, and eventually the truth that 2 comes by knowing Jesus. We also pray that you would 3 be with them at this time. We ask these things in 4 Jesus' name. Amen."</p> <p>5 As a School Board member would you view 6 this prayer as violative of paragraph three of your 7 policy?</p> <p>8 A. Let me say I would sit on the fence with 9 this one. As far as a prayer among the ten of us I 10 think it's appropriate. I'm speaking about the one 11 sentence, "We pray that you direct them into the 12 truth, and eventually the truth that comes by 13 knowing Jesus." I'm sure some people might think 14 that that is a bit preachy. Does it offend me, no 15 because we are ten people, and when we pray it's 16 among the ten of us, and there is no reason for it 17 to be viewed or seen or anything by anyone else 18 unless they choose to.</p> <p>19 Q. I see. The way you look at the prayer that 20 is offered by the person, the Board member who is 21 invited by Mr. Bireley, is that it's prayer among 22 the ten of you?</p> <p>23 A. Yes.</p> <p>24 Q. Is there any reason why that prayer among</p>

<p>61</p> <p>1 A. Yes.</p> <p>2 Q. And when it occurred to you that maybe you</p> <p>3 could solve this problem by praying privately, that</p> <p>4 was a solution in your mind because that would be an</p> <p>5 idea that came from you, and it wasn't dictated by</p> <p>6 somebody else?</p> <p>7 A. I don't know that it was a solution in my</p> <p>8 mind. It was something that could be maybe talked</p> <p>9 about and dealt with and maybe it was an answer or</p> <p>10 part of an answer or, you know, something to think</p> <p>11 about or whatever.</p> <p>12 Q. All right, let me give you the third</p> <p>13 prayer.</p> <p>14 A. Okay.</p> <p>15 Q. "Allah, we offer you our school bus</p> <p>16 drivers, we offer you our superintendent, our</p> <p>17 administrators and our secretaries. We offer you</p> <p>18 our teachers and our parents. Finally, we offer you</p> <p>19 our students. Peace be unto your prophet Muhammad.</p> <p>20 A. Okay, and your question is?</p> <p>21 Q. My question is do you believe that if one</p> <p>22 of your colleagues gave that prayer that it would</p> <p>23 violate paragraph three of the policy?</p> <p>24 A. No.</p>	<p>63</p> <p>1 was that way. I just assumed, you know, that's the</p> <p>2 way it was.</p> <p>3 Q. Okay. In the period 2002 to October 2004</p> <p>4 did the Board president read or speak any disclaimer</p> <p>5 before the prayer was offered?</p> <p>6 A. No. No, I don't think so.</p> <p>7 Q. In the period after October 19, 2004 has</p> <p>8 the Board president read or spoken a disclaimer</p> <p>9 before the prayer is offered?</p> <p>10 A. Since this all came about?</p> <p>11 Q. Yes, ma'am.</p> <p>12 A. Then that's when we started having the</p> <p>13 disclaimer.</p> <p>14 Q. Okay. We don't have a copy of the</p> <p>15 disclaimer that's read?</p> <p>16 A. Okay.</p> <p>17 Q. But we do have some testimony about it.</p> <p>18 Mr. Bireley has said that he has a piece of paper</p> <p>19 that he takes to the meetings?</p> <p>20 A. He does.</p> <p>21 Q. So, you have seen the piece of paper?</p> <p>22 A. Well, I've seen him reading something.</p> <p>23 Q. But he said, he was helpful, he said look I</p> <p>24 think what's on my piece of paper is paragraph one</p>
<p>62</p> <p>1 Q. In the period from 2002 to October 2004,</p> <p>2 that's the period when you were on the Board prior</p> <p>3 to the adoption of the Board Policy BDA.1, okay?</p> <p>4 A. Okay.</p> <p>5 Q. You have the period in mind?</p> <p>6 A. Yes.</p> <p>7 Q. Did the president of the Board -- how did</p> <p>8 the president of the Board cause a prayer to be</p> <p>9 offered. Did he just invite somebody to offer a</p> <p>10 prayer?</p> <p>11 A. Normally it was understood that if we were</p> <p>12 at the southern end of the district Mr. Helms gave</p> <p>13 the prayer, and if we were at the northern end of</p> <p>14 the district Mr. Evans gave the prayer because these</p> <p>15 gentlemen were comfortable with praying out loud.</p> <p>16 That's my understanding.</p> <p>17 Q. Okay.</p> <p>18 A. Like I said I didn't come on the Board</p> <p>19 until 2002, and that's the way it was being done</p> <p>20 when I came on.</p> <p>21 Q. And did you develop the understanding that</p> <p>22 some of the other eight Board members were not</p> <p>23 comfortable praying out loud?</p> <p>24 A. I really didn't pay any attention to why it</p>	<p>64</p> <p>1 and paragraph four of the policy?</p> <p>2 A. Yes, I think he's right.</p> <p>3 Q. Okay.</p> <p>4 A. Because I thought that looked awfully</p> <p>5 familiar.</p> <p>6 Q. All right. Now, you said a little earlier</p> <p>7 that everybody knows that they can leave the meeting</p> <p>8 if they want to, if they don't want to hear the</p> <p>9 prayer, okay?</p> <p>10 A. Uh-hum.</p> <p>11 Q. I'm going to read the disclaimer and tell</p> <p>12 me if I read it about the way Mr. Bireley reads it.</p> <p>13 I'm going to read paragraph one and paragraph four.</p> <p>14 A. Okay.</p> <p>15 Q. "In order to solemnify its proceedings the</p> <p>16 Board of Education may choose to open its meetings</p> <p>17 with a prayer or moment of silence, all in accord</p> <p>18 with the freedom on conscience of the individual</p> <p>19 adult Board member. Such opportunity shall not be</p> <p>20 used or exploited to proselytize, advance or convert</p> <p>21 anyone, or to derogate or otherwise disparage any</p> <p>22 particular faith or belief, " Mrs. Bunting?</p> <p>23 A. Uh-hum.</p> <p>24 Q. Is that basically the way Mr. Bireley reads</p>

<p>65</p> <p>1 the disclaimer?</p> <p>2 A. He doesn't usually read number three.</p> <p>3 Q. I didn't read number three either. Oh, I'm</p> <p>4 sorry, I did. You were right, I was wrong. I'm</p> <p>5 going to try it again, okay?</p> <p>6 "In order to solemnify its proceedings, the</p> <p>7 Board of Education may choose to open its meetings</p> <p>8 with a prayer or moment of silence, all in accord</p> <p>9 with the freedom of conscience of the individual</p> <p>10 adult Board member. Such prayer is voluntary, and</p> <p>11 it is among only the adult members of the Board. No</p> <p>12 school employee, student in attendance, or member of</p> <p>13 the community in attendance shall be required to</p> <p>14 participate in any such prayer or moment of</p> <p>15 silence." And then he would call on one of the</p> <p>16 Board members, right?</p> <p>17 A. Yeah, that's pretty much it.</p> <p>18 Q. Okay. I will represent to you, Mrs.</p> <p>19 Bunting, that it took me 20 seconds to read that</p> <p>20 disclaimer?</p> <p>21 A. Okay.</p> <p>22 Q. Do you think that a member of the audience</p> <p>23 could get up and leave the auditorium in that 20</p> <p>24 second period before a Board member begins his</p>	<p>67</p> <p>1 Q. Do you think that a person who indicates</p> <p>2 his unwillingness to listen to a prayer to open the</p> <p>3 meetings might be fearful that he would be subject</p> <p>4 to intimidation or recriminations from the</p> <p>5 community?</p> <p>6 A. I feel a person that felt that strongly</p> <p>7 about it that wanted to leave when that occurred</p> <p>8 would probably be the kind of person that no would</p> <p>9 not be fearful in getting up and leaving, if they</p> <p>10 had such conviction.</p> <p>11 Q. Do you think Mrs. Dobrich is a person with</p> <p>12 such conviction?</p> <p>13 A. I think Mrs. Dobrich is the type of person,</p> <p>14 from what I've seen, that she had the conviction to</p> <p>15 come and state her case and all. I think that she</p> <p>16 would be the type that yes would be willing to get</p> <p>17 up and leave and not listen to the prayer.</p> <p>18 Q. And what is your understanding of the</p> <p>19 community's reaction to Mrs. Dobrich after she</p> <p>20 exercised the courage of her convictions?</p> <p>21 A. What is my understanding of what the</p> <p>22 community did?</p> <p>23 Q. Yes.</p> <p>24 A. I don't know that the community did</p>
<p>66</p> <p>1 prayer?</p> <p>2 A. Could they get up and leave? They could</p> <p>3 get up and be on their way out, I don't know that</p> <p>4 they'd be all the way out.</p> <p>5 Q. At what point in that disclaimer do you</p> <p>6 think that a person in attendance would understand</p> <p>7 that if they want to leave they had better leave, if</p> <p>8 they want not to hear the prayer they had better</p> <p>9 leave?</p> <p>10 A. Whey they say open its meetings with a</p> <p>11 prayer.</p> <p>12 Q. Okay. How do you think -- do you think it</p> <p>13 would take some courage for someone in response to</p> <p>14 the disclaimer to stand up and leave a Board meeting</p> <p>15 of the Indian River School District?</p> <p>16 A. Courage is something that I don't know how</p> <p>17 to explain courage. Some of us older individuals</p> <p>18 seem to be able to do things that younger people</p> <p>19 wouldn't do, is that what you're saying?</p> <p>20 Q. No.</p> <p>21 A. I mean courage to stand up and leave, it</p> <p>22 wouldn't take me -- it wouldn't take much courage</p> <p>23 for me to stand up and leave if something were not</p> <p>24 going my way.</p>	<p>68</p> <p>1 anything.</p> <p>2 Q. Do you know whether Mrs. Dobrich received</p> <p>3 hundreds of anonymous phone calls?</p> <p>4 A. No, sir, I have no knowledge of any of</p> <p>5 that.</p> <p>6 Q. We've already been through the August 24th</p> <p>7 public comment?</p> <p>8 A. Uh-huh.</p> <p>9 Q. Do you know whether Mrs. Dobrich was</p> <p>10 harassed in any way?</p> <p>11 A. The only time I saw Mrs. Dobrich was that</p> <p>12 evening because I think I missed the first time she</p> <p>13 came to the Board. I can't recall why I missed it,</p> <p>14 but I don't think I was there the first time she</p> <p>15 came to the Board. I was there the evening when all</p> <p>16 the other people showed up, and I saw Mrs. Dobrich</p> <p>17 one other time when I went to Wilmington when we</p> <p>18 were asked to come up.</p> <p>19 Q. Yes, ma'am.</p> <p>20 A. So they're the only two times that I know</p> <p>21 of that I saw Mrs. Dobrich. And I have -- no one</p> <p>22 told me that she had received phone calls or</p> <p>23 letters, so I have no knowledge of that.</p> <p>24 Q. I'm going to represent to you that she did,</p>

<p>73</p> <p>1 worry about anyway, you know? I don't know,</p> <p>2 personally if something bothered me I'd get up and</p> <p>3 leave, that's me. Whether someone else would feel</p> <p>4 that way, I don't know.</p> <p>5 Q. Let me explore the number of people at the</p> <p>6 meetings. The reports have been that at that August</p> <p>7 24th meeting there were 7 or 800 people?</p> <p>8 A. Uh-huh.</p> <p>9 Q. The crowd overflowed the room in which you</p> <p>10 and your colleagues were sitting?</p> <p>11 A. Uh-hum.</p> <p>12 Q. And there was an entire other room set</p> <p>13 up --</p> <p>14 A. Uh-hum.</p> <p>15 Q. -- with a video feed?</p> <p>16 A. Right.</p> <p>17 Q. And there were speakers set up in the</p> <p>18 parking lot, do you remember that?</p> <p>19 A. I didn't know there were speakers in the</p> <p>20 parking lot.</p> <p>21 Q. That's what we understand, I don't know.</p> <p>22 And as you said, that was not a typical meeting,</p> <p>23 correct?</p> <p>24 A. No.</p>	<p>75</p> <p>1 right?</p> <p>2 A. Oh, no it's academic as well, but again the</p> <p>3 academic wouldn't be as much because they would be</p> <p>4 awarded maybe Odyssey of the Mind, that would be at</p> <p>5 the end of the year. We don't bring in kids just</p> <p>6 because they got As on their report cards or stuff</p> <p>7 like that. It's usually something major.</p> <p>8 Q. I've read the minutes?</p> <p>9 A. Uh-huh.</p> <p>10 Q. And I've seen recognition being given to</p> <p>11 kids for being in the Fifth Grade Yell Club, I've</p> <p>12 seen recognition -- I can show you the minutes, if</p> <p>13 you like?</p> <p>14 A. Fifth Grade Yell Club?</p> <p>15 Q. Yes, ma'am?</p> <p>16 A. Lately?</p> <p>17 Q. Within the last five years?</p> <p>18 A. Fifth Grade Yell Club, well did they win a</p> <p>19 competition?</p> <p>20 Q. I don't know.</p> <p>21 A. Well, they would have had to have won a</p> <p>22 competition.</p> <p>23 Q. Okay. In addition to the awards that</p> <p>24 students get the JROTC, the Junior ROTC presents the</p>
<p>74</p> <p>1 Q. On the other hand, particularly during the</p> <p>2 school year, there are, there is a significant</p> <p>3 number of people at School Board meetings, correct?</p> <p>4 A. Uh-hum.</p> <p>5 Q. Because you have members of the public who</p> <p>6 are interested in various issues that would be on</p> <p>7 the agenda, you have anywhere from a dozen to 50 or</p> <p>8 so students getting awards or recognition for some</p> <p>9 achievements during the school year, correct?</p> <p>10 A. On occasion.</p> <p>11 Q. Yes. When you say on occasion, pretty much</p> <p>12 every meeting during the school year you have</p> <p>13 students getting recognition, don't you?</p> <p>14 A. Well, you have them like at the end of</p> <p>15 football season or maybe at the end of baseball</p> <p>16 season, you know, athletes coming in. A lot of</p> <p>17 times they are still in their athletic garb, you</p> <p>18 know and they are just running in to grab it or</p> <p>19 whatever.</p> <p>20 I wouldn't say every meeting, but probably</p> <p>21 more than half of them, maybe.</p> <p>22 Q. It's not just limited to athl --</p> <p>23 A. Guesstimate.</p> <p>24 Q. But it's not just limited to athletes,</p>	<p>76</p> <p>1 colors at every meeting during the school year?</p> <p>2 A. Yes, they do.</p> <p>3 Q. Don't they?</p> <p>4 A. Uh-hum.</p> <p>5 Q. And you also get performing groups,</p> <p>6 students who are bands of the steel band or chorus</p> <p>7 groups who occasionally perform for the Board?</p> <p>8 A. I think the steel band performed because</p> <p>9 they wanted permission to go on their trip down in</p> <p>10 South America somewhere. They did perform for us,</p> <p>11 yes.</p> <p>12 Q. So, to come back to my original question,</p> <p>13 clearly at a regular Board meeting has many fewer</p> <p>14 people than you had on August 24th, but can we agree</p> <p>15 that you routinely have ten, 20, 30, 40, 50 people</p> <p>16 other than yourselves at the Board meetings?</p> <p>17 A. I would say more than half of the time we</p> <p>18 probably have between 20 and 50 people.</p> <p>19 Q. Okay?</p> <p>20 A. More than half of the time. Last meeting</p> <p>21 there was just us pretty much.</p> <p>22 Q. And of those people that you just tried to</p> <p>23 estimate, would more than half of them be students</p> <p>24 on a typical basis?</p>

<p>109</p> <p>1 prayers that would be offered by the board</p> <p>2 members --</p> <p>3 A. Uh-hum.</p> <p>4 Q. -- "Any such prayers may be sectarian or</p> <p>5 non-sectarian, denominational or non-denominational,</p> <p>6 in the same of a Supreme Being, Jehovah, Jesus</p> <p>7 Christ, Buddha, Allah, or any other person or</p> <p>8 entity, all in accord with the freedom of</p> <p>9 conscience, speech and religion of the individual</p> <p>10 Board member and his or her particular religious</p> <p>11 heritage." You approved that language?</p> <p>12 A. Yes.</p> <p>13 Q. Would you describe for me the difference</p> <p>14 between a sectarian prayer and a non-sectarian</p> <p>15 prayer?</p> <p>16 A. Again, my belief, I could not give what I</p> <p>17 would call a non-sectarian prayer, because I would</p> <p>18 have to mention Jesus Christ in my prayer, and I</p> <p>19 would consider that a sectarian prayer. So, if I</p> <p>20 gave a prayer it would have to be sectarian and not</p> <p>21 non-sectarian.</p> <p>22 Q. The mention of Jesus Christ in a prayer,</p> <p>23 and that making it sectarian, is that because the</p> <p>24 prayer would refer to a particular Deity of the</p>	<p>111</p> <p>1 relate them back to scripture and stuff like that.</p> <p>2 And -- but I'm just -- I believe that when I pray I</p> <p>3 have to give credit to Jesus.</p> <p>4 Q. You touched on this earlier, but it is also</p> <p>5 your view, isn't it, that it does not matter to the</p> <p>6 Lord how you seek his guidance. It can be out loud</p> <p>7 it can be silently, it can be using a traditional</p> <p>8 prayer it could be using your own words, it could be</p> <p>9 on your knees or standing up. Any way God will hear</p> <p>10 our prayers no matter how they are delivered?</p> <p>11 A. My God says pray without ceasing.</p> <p>12 Q. And what does that mean to you?</p> <p>13 A. That means to me to pray everywhere, any</p> <p>14 time, all the time, whether privately or publicly,</p> <p>15 to pray without ceasing.</p> <p>16 Q. And your understanding of that admonition</p> <p>17 is that your life should be an example of the</p> <p>18 principles of your faith. It's not possible</p> <p>19 obviously to pray without ceasing?</p> <p>20 A. It's not possible.</p> <p>21 Q. Literally?</p> <p>22 A. Literally, no, sir.</p> <p>23 Q. On the other hand, that admonition is an</p> <p>24 example that God hears us no matter how we appeal to</p>
<p>110</p> <p>1 particular sect?</p> <p>2 A. Yes. In my religion you get to the Father</p> <p>3 through the Son, and to deny the Son is not a</p> <p>4 prayer.</p> <p>5 Q. Just so that I understand, and so</p> <p>6 delivering any prayer that does not mention Jesus</p> <p>7 Christ would be to deny Jesus Christ?</p> <p>8 A. For me to, for me to give that prayer.</p> <p>9 Q. Yes, ma'am.</p> <p>10 A. That's a personal, my religion.</p> <p>11 Q. Yes, ma'am. And what is your religion?</p> <p>12 A. Methodist.</p> <p>13 Q. Are you a church goer?</p> <p>14 A. No, I'm not.</p> <p>15 Q. I take it at some point you were a church</p> <p>16 goer?</p> <p>17 A. I was raised in the church as a child.</p> <p>18 Q. As a Methodist?</p> <p>19 A. As a Methodist.</p> <p>20 Q. And that's where you formed the belief that</p> <p>21 you just articulated?</p> <p>22 A. I have a personal bond, and I do attend</p> <p>23 certain things, like I'm in a group where we study</p> <p>24 books on self-help and that type of thing, and we</p>	<p>112</p> <p>1 him?</p> <p>2 A. True.</p> <p>3 Q. At two of the Board meetings since October</p> <p>4 19, 2004 when the policy was adopted you have</p> <p>5 offered a moment of silence rather than a prayer?</p> <p>6 A. I offered one moment of silence.</p> <p>7 Q. I'm sorry. One moment of silence?</p> <p>8 A. Uh-hum.</p> <p>9 Q. Could you tell me how you made the decision</p> <p>10 to offer a moment of silence at that meeting and</p> <p>11 then at subsequent meetings to offer prayers?</p> <p>12 A. Very simple thing. The moment of silence,</p> <p>13 apparently the person who had been asked to give the</p> <p>14 prayer that night, and I don't recall what the</p> <p>15 reason was, either they were sick and weren't able</p> <p>16 to get there or they were going to be late or</p> <p>17 whatever, I didn't find out until I got there that</p> <p>18 someone needed to give the prayer and could I do it,</p> <p>19 and I said sure. I cannot stand up and give a</p> <p>20 prayer like Reggie or someone else can do, I need to</p> <p>21 write mine down. I didn't have time to write it</p> <p>22 down, so I chose to do the moment of silence.</p> <p>23 Q. When you did that, did you feel that the</p> <p>24 moment of silence was effective to solemnify that</p>

<p>125</p> <p>1 the August 24th meeting, do you know whether</p> <p>2 meetings of the Board are customarily videotaped?</p> <p>3 A. I -- we have understood, and I don't know</p> <p>4 if we are wrong or not, it's not customary as far as</p> <p>5 we're concerned. It was my understanding that they</p> <p>6 were trying to show the people in another room what</p> <p>7 was going on.</p> <p>8 Q. And so the tape was just incidental?</p> <p>9 A. The tape was incidental. It was to let the</p> <p>10 people who were in another, in the big auditorium --</p> <p>11 well, we were in the cafeteria and the other group</p> <p>12 was in the gymnasium, and it was my understanding</p> <p>13 that we were being videotaped so that those people</p> <p>14 could see what's going on.</p> <p>15 Q. Thanks. You are the first person who has</p> <p>16 had an answer to that question.</p> <p>17 A. Well, that's just my understanding, I don't</p> <p>18 know it that was true or not.</p> <p>19 Q. When you gave the prayers in the meetings</p> <p>20 following the adoption of PX9, the Board Prayer</p> <p>21 Policy, is it correct that there were students in</p> <p>22 attendance at each of the meetings?</p> <p>23 A. You know, whether there were or whether</p> <p>24 there were not, I can't honestly say. I know for</p>	<p>127</p> <p>1 to give? That is to say, you decided what prayer</p> <p>2 you were going to give based on your own personal</p> <p>3 beliefs and you weren't going to alter it based on</p> <p>4 what the beliefs were of other people?</p> <p>5 A. That's correct, it's our understanding of</p> <p>6 the way we do it.</p> <p>7 Q. Were you involved in the process to hire a</p> <p>8 new Board lawyer for the Indian River School</p> <p>9 District?</p> <p>10 A. Yes, sir.</p> <p>11 Q. How many lawyers did you interview?</p> <p>12 A. We ended up not interviewing anyone to my</p> <p>13 knowledge.</p> <p>14 Q. How was the new lawyer selected?</p> <p>15 A. We had, I think five people on the list,</p> <p>16 and the first thing we did was go through and look</p> <p>17 about how much they were going to charge to be quite</p> <p>18 honest, and we sort of were able to eliminate a few</p> <p>19 people. You mean our regular Board lawyer, you</p> <p>20 don't mean these guys?</p> <p>21 Q. Yes.</p> <p>22 A. And we sort of did that. We were very</p> <p>23 familiar with one lawyer on there that we had had</p> <p>24 contact with before, and we were impressed with him.</p>
<p>126</p> <p>1 sure there was a possibility that there were, but I</p> <p>2 didn't go out and look and check the audience before</p> <p>3 I gave it.</p> <p>4 Q. In the prayers as opposed to the moment of</p> <p>5 silence that you led, in the prayers that you gave</p> <p>6 you prayed in the name of Jesus, correct?</p> <p>7 A. Yes, I did.</p> <p>8 Q. If there were students there is it correct</p> <p>9 that you did not know their religious faith?</p> <p>10 A. No, I did not know their religious faith.</p> <p>11 Q. Did you notice whether anyone whether</p> <p>12 student or adult got up to leave the room when Mr.</p> <p>13 Bireley. Or I guess Mr. Walls was the previous</p> <p>14 president, correct, of the Board?</p> <p>15 A. Mr. Walls --</p> <p>16 Q. When Mr. Walls or Mr. Bireley read the</p> <p>17 disclaimer?</p> <p>18 A. Did I notice anyone leaving?</p> <p>19 Q. Yes.</p> <p>20 A. No, I was too busy getting my notes out to</p> <p>21 read.</p> <p>22 Q. Am I right that the religious faith of the</p> <p>23 persons in attendance at the meeting would not have</p> <p>24 affected in any way the prayer that you were going</p>	<p>128</p> <p>1 Q. That was Mr. Williams?</p> <p>2 A. That was Mr. Williams. So, we didn't want</p> <p>3 to put anyone to a whole lot of trouble to come be</p> <p>4 interviewed if we had all pretty much felt we knew</p> <p>5 enough about that gentleman to know that he was the</p> <p>6 one we'd like to have.</p> <p>7 Q. How did you -- what contact had you had</p> <p>8 with Mr. Williams prior to this process?</p> <p>9 A. The only contact -- I had had two contacts</p> <p>10 with Mr. Williams. I heard Mr. Williams speak at a</p> <p>11 DSBA meeting, the group that I was with last night.</p> <p>12 Q. Yes.</p> <p>13 A. And he was down with us with our other</p> <p>14 lawsuit I guess one evening.</p> <p>15 Q. Your other lawsuit?</p> <p>16 A. Yes, our high school in Georgetown, we have</p> <p>17 been sued by the people who were the bonding agents</p> <p>18 for the HVAC group that went belly-up.</p> <p>19 Q. And Mr. Williams had been involved in that</p> <p>20 lawsuit --</p> <p>21 A. No, he has not been involved in it, but for</p> <p>22 some reason someone asked him to come down and give</p> <p>23 us some advice about that situation or something.</p> <p>24 Q. When Mr. Williams spoke at the DSBA what</p>

EXHIBIT 3

<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE DISTRICT OF DELAWARE 3 MONA DOBRICH and MARCO : C.A. No. 15-120 (JJF) 4 DOBRICH, Individually and : 5 as parents and next friend : 6 of ALEXANDER DOBRICH, : 7 SAMANTHA DOBRICH, JANE DOE : 8 and JOHN DOE, Individually : 9 and as parents and next : 10 friend of JORDAN DOE and : 11 JAMIE DOE, : 12 : 13 Plaintiffs, : 14 : 15 v. : 16 : 17 INDIAN RIVER SCHOOL : 18 DISTRICT, et al., : 19 : 20 Defendants. : 21 : 22 Videotaped Deposition of RICHARD COHEE, 23 taken pursuant to notice, on Tuesday, October 17, 2006 24 at 1:17 p.m. at 31 Hosier Street, Selbyville, Delaware, reported by Lorena J. Hartnett, a Registered Professional Reporter and Notary Public.</p> <p>APPEARANCES: BRIAN G. LENHARD, ESQUIRE RICHARD HORVATH, ESQUIRE One Rodney Square Wilmington, DE 19801 Attorney for the Plaintiff</p> <p>WILCOX & FETZER 1330 King Street - Wilmington, DE 19801 302-655-0477 www.wilfet.com</p>	<p>3</p> <p>1</p> <p>2</p> <p>3 TABLE OF CONTENTS</p> <p>4 TESTIMONY OF RICHARD COHEE:</p> <p>5 Direct Examination by Mr. Lenhard 4</p> <p>6 Certificate of Reporter116</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p>2</p> <p>1</p> <p>2 APPEARANCES (CONTINUED):</p> <p>3 JASON P. GOSSELIN, ESQUIRE 4 Drinker, Biddle & Reath, LLP 5 One Logan Square 6 18th and Cherry Streets 7 Philadelphia, PA 19103-6996 8 Attorney for the Defendants</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>4</p> <p>1 VIDEOGRAPHER: This is the videotaped</p> <p>2 deposition of Mr. Richard Cohee taken by the</p> <p>3 plaintiff in the matter of Dobrich et al</p> <p>4 versus Indian River School District, et al,</p> <p>5 Case Number 15-120. This deposition is</p> <p>6 being held at 31 Hosier Boulevard. We are</p> <p>7 going on the record on October 17, 2006 at</p> <p>8 approximately 1:17 p.m.</p> <p>9 The court reporter is Lorena Hartnett</p> <p>10 from the firm of Wilcox and Fetzer,</p> <p>11 Wilmington, Delaware. My name is Lindsay</p> <p>12 DuPhily. I am the videotape specialist with</p> <p>13 Discovery Video Services.</p> <p>14 Counsel will now introduce themselves</p> <p>15 and the court reporter will swear in the</p> <p>16 witness.</p> <p>17 MR. LENHARD: My name is Brian</p> <p>18 Lenhard, and I represent the plaintiffs in</p> <p>19 this action.</p> <p>20 MR. GOSSELIN: Jason Gosselin for</p> <p>21 defendants.</p> <p>22 RICHARD COHEE,</p> <p>23 HAVING FIRST BEEN DULY SWORN, TESTIFIED AS FOLLOWS:</p> <p>24 DIRECT EXAMINATION ON BEHALF OF THE PLAINTIFF</p>

<p>37</p> <p>1 A. Not necessarily correct.</p> <p>2 Q. Well, without your motion she would have done</p> <p>3 so?</p> <p>4 A. My motion brought in a representative from</p> <p>5 student government from each of the two high schools,</p> <p>6 and most of the time we had one, not two. If we were</p> <p>7 meeting at Indian River, it would be the Indian River,</p> <p>8 and the next month we met at Sussex Central, it would</p> <p>9 be Sussex Central. My motion did not bring in other</p> <p>10 students who were recognized for sports banquets,</p> <p>11 odyssey of the mind, those kinds of things.</p> <p>12 Q. Okay, so for student government, the board,</p> <p>13 through your motion, is responsible for bringing them</p> <p>14 to the meetings?</p> <p>15 A. As I said earlier, they were coming to the</p> <p>16 meetings informally prior to the motion. My motion, I</p> <p>17 felt, recognized them, gave them an opportunity on the</p> <p>18 agenda, recognized their involvement, and basically</p> <p>19 allowed them to continue what they had been doing but</p> <p>20 with, "This is the time on the agenda when you will be</p> <p>21 here." Because some students would come late. When</p> <p>22 you said, you know, "Is everybody ready to begin the</p> <p>23 meeting," sometimes people wander in and out.</p> <p>24 They can look at the agenda and say, okay,</p>	<p>39</p> <p>1 said before.</p> <p>2 Q. Is there a history of school board prayer in</p> <p>3 Indian River, in your view?</p> <p>4 A. Is there a history of school board prayer in</p> <p>5 Indian River? Yes.</p> <p>6 Q. Do you know why the school board opened its</p> <p>7 meetings with prayer before adoption of the school</p> <p>8 board policy?</p> <p>9 A. It was a practice that was in place when I</p> <p>10 first came to the board and I understand was there for</p> <p>11 sometime before I came to the board, and that has</p> <p>12 continued since I have been with the board.</p> <p>13 Q. What is your view of its purpose?</p> <p>14 A. I feel that it's one moment when we all kind</p> <p>15 of recognize that we are getting down to business</p> <p>16 here, recognize that we are having a great deal of</p> <p>17 serious issues involving people's kids and people's</p> <p>18 money.</p> <p>19 When I was running for the school board I</p> <p>20 would say you never get involved with anything that</p> <p>21 involves people's kids or people's money, and that</p> <p>22 involves both of them.</p> <p>23 And I think it was a moment for the whole</p> <p>24 board to come together and go about their business and</p>
<p>38</p> <p>1 they got this much on the agenda, any idea what time</p> <p>2 we are going to be up, and you get a better idea of</p> <p>3 what the time line is going to be.</p> <p>4 We have had school board meetings that went</p> <p>5 till two in the morning or later, so. It's not a</p> <p>6 common practice anymore, but that has been the case.</p> <p>7 Q. Since your motion passed, can you identify</p> <p>8 any meeting during the school year at which the</p> <p>9 student government did not show up?</p> <p>10 A. I know that there have been meetings when we</p> <p>11 did not hear from the representative. I can't</p> <p>12 identify which particular meeting, but I know that</p> <p>13 there have been meetings when we did not hear from the</p> <p>14 student government.</p> <p>15 Q. Did your motion incorporate the student's</p> <p>16 attendance as part of the official board meeting?</p> <p>17 A. Can you explain that?</p> <p>18 Q. Did your motion state that the student</p> <p>19 government would become part of the official board</p> <p>20 meeting?</p> <p>21 A. My motion, as I recall it, and again I am</p> <p>22 going back over ten years, was not to assure the</p> <p>23 attendance but to assure their spot on the agenda,</p> <p>24 recognize them for what they were doing, as I have</p>	<p>40</p> <p>1 recognize that during that meeting we may have</p> <p>2 differences and that when we walk away from the board</p> <p>3 table we support the decisions and move forward,</p> <p>4 whether we disagreed during the meeting or not.</p> <p>5 Q. To summarize, would you say that the purpose</p> <p>6 is to solemnize the meetings, then?</p> <p>7 A. Yes.</p> <p>8 Q. Is there any other purpose besides what you</p> <p>9 described?</p> <p>10 A. Not that I am aware of or not on my part.</p> <p>11 Q. Is there a disclaimer read at current board</p> <p>12 meetings?</p> <p>13 A. Yes.</p> <p>14 Q. What affect do you think that has?</p> <p>15 A. What affect do I think it has?</p> <p>16 Q. Yes.</p> <p>17 A. Well, not being smart, but I have never sat</p> <p>18 in the audience when it was read, so I don't know that</p> <p>19 I know the affect that it has. I think I know the</p> <p>20 intended purpose, and that's to recognize that it is a</p> <p>21 board prayer, it is our prayer, and that we are not</p> <p>22 encouraging anyone else to participate. That's how I</p> <p>23 interpret it.</p> <p>24 Q. So the school board prayer is directed only</p>

<p style="text-align: right;">53</p> <p>1 one-on-one discussions with -- And I can't sit here</p> <p>2 and tell you what exact board member at this point,</p> <p>3 but there were those kind of brief moments like this</p> <p>4 is really causing us, you know, some attention here</p> <p>5 and this meeting is an overflow crowd type thing.</p> <p>6 I don't recall having any one-on-one</p> <p>7 conversations as far as my beliefs other than I do</p> <p>8 believe that whoever is around that table should be</p> <p>9 able to pray as they see fit.</p> <p>10 Q. A minute ago when you referred to these</p> <p>11 conversations in general, you said that you, there</p> <p>12 were discussions about the school board prayer and the</p> <p>13 school board prayer policy but yet you cannot recall</p> <p>14 specific instances; correct?</p> <p>15 A. There were discussions about school board</p> <p>16 prayer, school board policy, at various board</p> <p>17 meetings.</p> <p>18 Q. Were any of those board meetings public board</p> <p>19 meetings?</p> <p>20 A. Um, I think there was a special board</p> <p>21 meeting, and I cannot remember if it was opened or</p> <p>22 closed. We heard a lot from the public. It wasn't a</p> <p>23 discussion, because our public comment session is one</p> <p>24 way, we listen and they speak. We heard a lot from</p>	<p style="text-align: right;">55</p> <p>1 up where something had changed with the different</p> <p>2 guidelines that we needed to look at the policies that</p> <p>3 might have been old or outdated.</p> <p>4 I can't speak to just how it works, because I</p> <p>5 have not been to any policy meetings in a number of</p> <p>6 years, how it currently works.</p> <p>7 Q. Do you know whether or not it's different</p> <p>8 from how you ran the Policy Committee?</p> <p>9 A. I can't say, because I see the end product</p> <p>10 and I comment on that in our discussions when I</p> <p>11 receive the first and second readings like everyone</p> <p>12 does.</p> <p>13 But the actual meetings, we are all invited</p> <p>14 to participate. As I said, this year personal and</p> <p>15 professional demands have put a real burden on my free</p> <p>16 time.</p> <p>17 Q. Is it correct that there is no school board</p> <p>18 prayer policy for special meetings?</p> <p>19 A. Um, I don't think there is for a special</p> <p>20 meeting. As you have pointed out, this one says</p> <p>21 regular meeting.</p> <p>22 Q. And there is no school board prayer policy</p> <p>23 for executive sessions?</p> <p>24 A. No, not unless that executive session is part</p>
<p style="text-align: right;">54</p> <p>1 the various members of the public at a number of</p> <p>2 meetings on that issue.</p> <p>3 In the meetings, itself, I can't recall what</p> <p>4 discussion -- Um, well, there had to be, because the</p> <p>5 policy is adopted in a public meeting, so we would</p> <p>6 have discussions surrounding our concerns for that</p> <p>7 policy. That would be a public session.</p> <p>8 As I said before, the normal procedure is a</p> <p>9 first and second reading. Sometimes that's two</p> <p>10 successive months, and sometimes if the first draft</p> <p>11 just doesn't fly with anybody and they say go back to</p> <p>12 the drawing board and come back with something else,</p> <p>13 which might delay it a month or so. I don't recall</p> <p>14 the time line in this case.</p> <p>15 Q. Can you describe for me how the Policy</p> <p>16 Committee is involved in the policy drafting process?</p> <p>17 A. I am not sure. I haven't served on that</p> <p>18 committee in sometime. I chaired the committee in</p> <p>19 early to mid nineties, as I recall. Probably the</p> <p>20 committee meets and -- Well, I can't speak for</p> <p>21 Mr. Walls. Mr. Walls set up a system where they were</p> <p>22 routinely reviewing a number of policies.</p> <p>23 When I was there, we were working on policies</p> <p>24 where issues had been brought up or concerns brought</p>	<p style="text-align: right;">56</p> <p>1 of a regular meeting, but for the executive session,</p> <p>2 itself, no.</p> <p>3 Q. And did the board ever consider drafting</p> <p>4 policy?</p> <p>5 A. Um, I don't recall any discussion on that.</p> <p>6 There may have been. I don't recall any.</p> <p>7 Q. Okay, I would like to play -- I would like to</p> <p>8 play an audio recording for you. It's an Exhibit PX52</p> <p>9 we have introduced before. It's a board meeting from</p> <p>10 September 28, 2004, and it is the first reading of the</p> <p>11 policy.</p> <p>12 (Exhibit PX52, a videotape, was</p> <p>13 played for the witness.)</p> <p>14 BY MR. LENHARD:</p> <p>15 Q. Do you recall that from the September 28</p> <p>16 meeting?</p> <p>17 A. I recall at some point there being a couple</p> <p>18 readings of the meeting. Do I specifically recall</p> <p>19 that? I don't know. As I have said, in the last year</p> <p>20 or so I have missed a number of meetings. Some of</p> <p>21 them involved this issue.</p> <p>22 I don't know how many first readings we had</p> <p>23 on this, if more than one, so to sit here and say I</p> <p>24 was -- I can't say I was even present on that little</p>

<p style="text-align: right;">65</p> <p>1 A. That's okay. I take them on and off a 2 hundred times a day. 3 Q. Okay, if you turn to page four, which is 4 BPD702, you will see where the numbered paragraphs 5 start. 6 A. Okay, page four? 7 Q. About halfway down there is, it starts, the 8 paragraph starts, "In order to solemnify." Do you see 9 that? 10 A. Okay, number one? 11 Q. Number one. 12 A. Uh-huh. 13 Q. If you look at that and look at PX9 at the 14 same time, do you see that those paragraphs are 15 substantially the same? 16 A. Yes. 17 Q. Do you want to take the time to read it, or 18 have you read it before? 19 A. I recall this. 20 Q. Okay. 21 A. And I know that there is a lot of 22 similarities, as I skim through here, with those five 23 sections. 24 Q. Did anyone from the public ever ask you for a</p>	<p style="text-align: right;">67</p> <p>1 I can't sit here and say that with certainty. 2 Q. Can you turn to the second page of PX 14? On 3 the second page of that you will see there is a roll 4 call. 5 A. Okay. 6 Q. And you are listed there as present? 7 A. Yes. 8 Q. And the next section lists other visitors and 9 staff in attendance? 10 A. Yes. 11 Q. Can you tell me why those people were there 12 to discuss litigation? 13 A. No. Specifically, no. I will say that it 14 has been an occurrence that the superintendent and/or 15 the assistant superintendent has been present during, 16 over the years during discussion of potential 17 litigation or pending litigation, along with Janet 18 Hearn, who was our recording secretary. 19 Patrick Miller was finance. I am not sure 20 what role he would have played in that discussion. 21 And Jim Griffin at the time was an attorney. 22 Q. Okay, so in your discussion you mentioned the 23 superintendent and the assistant superintendent. 24 That's Ms. Hobbs is the superintendent?</p>
<p style="text-align: right;">66</p> <p>1 copy of this policy, PX9? 2 A. I don't know. I don't recall it. 3 Q. Did anyone submit -- Can you -- Strike that. 4 A. If I were to be asked, I would most likely 5 refer them to Central Office. 6 Q. Okay. All right, now I would like to give 7 you two documents which again you probably have over 8 there, PX13 and PX14. Do you recall why the board met 9 on August 23, 2004? 10 A. Well, it says here to discuss potential 11 pending litigation. The number there would identify 12 the issue, and I don't recall what number that was 13 used to identify the issue. 14 Q. You don't recall whether it meant -- 15 A. 0501PL, I don't know if that's the number 16 that refers to the issue that we are here for today or 17 not. 18 Q. Do you recall whether it had to do with 19 school board prayer in general? 20 A. I would -- Well, I know we had a number of 21 meetings about that, these issues, and I know some I 22 attended and some I did not. I would -- Well, I don't 23 want to guess, but my thoughts are this meeting could 24 have very well been in reference to these issues, but</p>	<p style="text-align: right;">68</p> <p>1 A. She was at that time. 2 Q. And Mr. Savage is assistant superintendent? 3 A. And he still is, yes. I think he was at that 4 time, but he is now. Can I clarify something, though? 5 Q. Sure. 6 A. That is the beginning of the meeting. Okay? 7 And then that's the roll call and the recording of who 8 is present, and then we go into executive session. 9 So whether or not those people all stayed, I 10 don't know. They could have been asked to leave, as 11 we have done on other occasions. 12 For example, it strikes me as a little odd 13 that the finance person was there. I would almost 14 venture to say that on this particular issue he was 15 asked or knew to step out, but I don't know that with 16 certainty. 17 Q. Well, let me ask you a question. Does the 18 board invite people to special meetings? 19 A. Depending on the issue, the board requires or 20 asks for certain information and it comes from various 21 sources. 22 Q. Well, if you look through the minutes, -- 23 A. Okay. 24 Q. -- which is simply that one page, do you see</p>

<p>105</p> <p>1 at the end.</p> <p>2 "Heavenly Father, thank you for this great</p> <p>3 occasion, for the work, the effort, the joys and</p> <p>4 everything that led up to this point in time.</p> <p>5 Thank you for your guidance in this event. We pray</p> <p>6 for your direction in the lives of each of these</p> <p>7 school board members. We pray that you direct them</p> <p>8 into the truth and eventually the truth that comes by</p> <p>9 knowing Jesus. We also pray that you will be with</p> <p>10 them at this time. We ask these things in Jesus's</p> <p>11 name. Amen."</p> <p>12 Same question: Does this prayer violate</p> <p>13 anything in the school board prayer policy?</p> <p>14 A. Um, I don't know that I would have -- I don't</p> <p>15 know that I would have a problem with this one.</p> <p>16 Q. Is there any reason for that?</p> <p>17 A. It's completely the opposite of what the</p> <p>18 other one is. There is only one comment in there that</p> <p>19 I would, if I had a chance to review it and take it</p> <p>20 out, I might look at "eventually the truth that comes</p> <p>21 by knowing Jesus," but, beyond that, I don't have a</p> <p>22 problem with it. And I don't have a problem with</p> <p>23 that, but that would be the one comment that, if I was</p> <p>24 revising it, that I would probably be concerned with</p>	<p>107</p> <p>1 A. No, he does not. I said if I were reviewing</p> <p>2 it as a board president, and normally you wouldn't be.</p> <p>3 Q. But if there were a question as to whether a</p> <p>4 prayer possibly violated the policy, do you think that</p> <p>5 all board members would discuss?</p> <p>6 A. If an individual board member came to me and</p> <p>7 said, "This is what I am going to say tonight; do you</p> <p>8 have a problem with it," then that's the perspective I</p> <p>9 am answering from. I don't know that that happens. I</p> <p>10 haven't done that, and when I was board president it</p> <p>11 didn't happen. Okay?</p> <p>12 Q. What would you do if someone gave a prayer</p> <p>13 that you thought violated this policy?</p> <p>14 A. That I didn't know in advance?</p> <p>15 Q. Correct.</p> <p>16 A. Um, at that particular time I would probably</p> <p>17 do nothing, and I may address it with the individual</p> <p>18 later or collectively as a board, "Here is the policy,</p> <p>19 folks; let's follow it."</p> <p>20 Q. All right, I am going to read you two more</p> <p>21 short prayers and ask you the same question whether</p> <p>22 they violate the policy.</p> <p>23 The prayer is, quote, "Allah, we offer you</p> <p>24 our school bus drivers. We offer you our</p>
<p>106</p> <p>1 from someone else's perspective.</p> <p>2 Q. Do you think that that prayer proselytizes?</p> <p>3 A. Um, no, overall, no.</p> <p>4 Q. Is there any one section that does?</p> <p>5 A. I mentioned a concern about one clause, but</p> <p>6 overall I would say no.</p> <p>7 Q. What clause was that?</p> <p>8 A. That was the one about "eventually the truth</p> <p>9 that comes by knowing Jesus, direct them into the</p> <p>10 truth."</p> <p>11 Q. Okay.</p> <p>12 A. And I am answering these in the perspective</p> <p>13 if I were the board president and I am allowing the</p> <p>14 board or picking from the board or rotating in this</p> <p>15 policy.</p> <p>16 And I don't know that the board president</p> <p>17 reviews these prayers in advance. I am assuming he</p> <p>18 does not review them. Okay? If I were given that</p> <p>19 ahead of the meeting and said, "Hey, what do you think</p> <p>20 of this," I would be fine with it overall. I would</p> <p>21 have a little concern about the one line.</p> <p>22 Q. Is the board president responsible on his own</p> <p>23 to determine whether it violates the school prayer</p> <p>24 policy?</p>	<p>108</p> <p>1 superintendent, our administrators, and our</p> <p>2 secretaries. We offer you our teachers and our</p> <p>3 parents. Finally, we offer you our students. Peace</p> <p>4 be unto your prophet, Muhammed." End quote.</p> <p>5 Does that violate the school board prayer</p> <p>6 policy?</p> <p>7 A. Can I read it? I am better at reading it</p> <p>8 than I am hearing it.</p> <p>9 Q. We might need to -- I will ask some questions</p> <p>10 while we get it to you in writing.</p> <p>11 A. Or just go through it again a little slower.</p> <p>12 Q. Sure, I will go through it again and see if</p> <p>13 we can do it that way. Quote: "Allah, we offer you</p> <p>14 our school bus drivers. We offer you our</p> <p>15 superintendent, our administrators, and our</p> <p>16 secretaries. We offer you our teachers and our</p> <p>17 parents. Finally, we offer you our students. Peace</p> <p>18 be unto your prophet, Muhammed." End quote.</p> <p>19 A. Um, I don't know a lot about that faith. The</p> <p>20 first thing that comes to mind is the offering and</p> <p>21 what the vocation is there. But as you read it and</p> <p>22 take it as you have read it, I don't see it as</p> <p>23 threatening. I can read into it if I so chose, as</p> <p>24 anyone else could, but I, as you have read it, I don't</p>

<p style="text-align: right;">109</p> <p>1 see it as being threatening or disparaging and would</p> <p>2 be acceptable.</p> <p>3 Q. Do you think that this prayer is</p> <p>4 proselytizing?</p> <p>5 A. That's what I just said, as you have read it,</p> <p>6 I don't see it as such.</p> <p>7 Q. Okay. All right, one more. It's even</p> <p>8 shorter. Here is the prayer. "We pray, Lord,</p> <p>9 enlighten the heathen in our midst, inspire them to</p> <p>10 come to your wisdom and goodness. We ask these things</p> <p>11 in the name of Jesus Christ. Amen."</p> <p>12 A. Read it one more time.</p> <p>13 Q. "We pray, Lord, enlighten the heathen in our</p> <p>14 midst, inspire them to come to your wisdom and</p> <p>15 goodness. We ask these things in the name of Jesus</p> <p>16 Christ. Amen."</p> <p>17 A. "Inspire the heathen, we ask them to come to</p> <p>18 you --" What was that clause?</p> <p>19 Q. Wisdom and goodness.</p> <p>20 A. Yeah, I would think that would violate the</p> <p>21 section, as well.</p> <p>22 Q. Okay. Do you think that non-Christians can</p> <p>23 get elected to the school board?</p> <p>24 A. Do I think they can?</p>	<p style="text-align: right;">111</p> <p>1 meetings?</p> <p>2 A. Any disruptions?</p> <p>3 Q. Yes.</p> <p>4 A. I don't recall any.</p> <p>5 Q. Do you recall whether there was a prayer</p> <p>6 given at the August 24, 2004 meeting? That was the</p> <p>7 one we played for you on the videotape.</p> <p>8 A. Um, I think that there was, but I don't know</p> <p>9 for certain.</p> <p>10 Q. If you look at the first, on the first page</p> <p>11 in the first paragraph.</p> <p>12 A. Of the minutes?</p> <p>13 Q. Of the August 24, yes, 2004 minutes.</p> <p>14 A. Okay, Dr. Hattier gave a prayer.</p> <p>15 Q. Correct. Now, you heard on videotape the</p> <p>16 laughter while Mr. Johnson was giving his public</p> <p>17 comment?</p> <p>18 A. I heard laughter and other sounds.</p> <p>19 Q. Would you call that solemn?</p> <p>20 A. Some of it I would, because some of it</p> <p>21 sounded like they were in support of the statement as</p> <p>22 far as I think I heard a couple amens and a couple</p> <p>23 yes, and that's not laughter.</p> <p>24 The laughter, I would say would probably not</p>
<p style="text-align: right;">110</p> <p>1 Q. Yes.</p> <p>2 A. Why couldn't they?</p> <p>3 Q. Do you think that the -- What do you think</p> <p>4 the religious faith of most people in the Indian River</p> <p>5 is?</p> <p>6 A. Religious faith would be mostly Christian.</p> <p>7 Q. Has that ever been an issue in the school</p> <p>8 board election?</p> <p>9 A. I don't know that it's been an issue with</p> <p>10 school board elections during my tenure, at least,</p> <p>11 prior to this. And I am not certain that it's been a</p> <p>12 sole issue since this, but I do know that, from</p> <p>13 reading comments by other opponents, and I can't even</p> <p>14 recall who they were, there were some issues with the</p> <p>15 board pursuing this by some, they were against it, so</p> <p>16 as minor -- Well, as minimal as that may be, I</p> <p>17 wouldn't say minor, then it is an issue, yes. In</p> <p>18 somebody's mind they don't agree with what the board</p> <p>19 is doing here.</p> <p>20 Q. There were board meetings on April 26, 2005</p> <p>21 and May 24, 2005, and I will represent to you those</p> <p>22 board minutes began with a moment of silence.</p> <p>23 A. Okay.</p> <p>24 Q. Do you recall any disruptions at those</p>	<p style="text-align: right;">112</p> <p>1 be solemn. However, it is the opportunity for the</p> <p>2 public to speak, and we have a policy for that. We</p> <p>3 try to adhere to that policy, and it's difficult to</p> <p>4 control what one says at the podium. It's also</p> <p>5 difficult to control what the audience participants</p> <p>6 interject.</p> <p>7 Q. Do you think it matters to the audience</p> <p>8 whether you give a prayer or a moment of silence</p> <p>9 before the school board meeting?</p> <p>10 A. I don't know whether it matters to the</p> <p>11 audience or not. It matters to the board, and we do</p> <p>12 it for the board. We don't do it for the audience.</p> <p>13 MR. LENHARD: I think I am getting</p> <p>14 close to the end, and I am going to suggest</p> <p>15 we take a few minute break for me to review</p> <p>16 the notes.</p> <p>17 THE WITNESS: Okay.</p> <p>18 VIDEOGRAPHER: Going off the record at</p> <p>19 approximately 4:02 p.m.</p> <p>20 (A recess was taken.)</p> <p>21 VIDEOGRAPHER: We are back on the</p> <p>22 record at approximately 4:09 p.m.</p> <p>23 BY MR. LENHARD:</p> <p>24 Q. Mr. Cohee, do you remember the audience</p>

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<p>113</p> <p>1 reaction to Dr. Hattier's prayer or the announcement</p> <p>2 that Dr. Hattier would give a prayer on August 24,</p> <p>3 2004?</p> <p>4 A. Um, I don't remember the reaction, but I</p> <p>5 think there was a lot of concern as to whether we</p> <p>6 would or not, and if there was any reaction at all, it</p> <p>7 most likely would have -- I shouldn't say that most</p> <p>8 likely, because I don't know. It would probably have</p> <p>9 been supportive.</p> <p>10 Q. When you said that the prayer was for the</p> <p>11 board members, is that because of the disclaimer?</p> <p>12 A. No, because it was for the board members long</p> <p>13 before we had the disclaimer or that policy.</p> <p>14 Q. Okay, have you ever seen someone get up and</p> <p>15 leave the meeting or attempt to leave the meeting when</p> <p>16 there is an announcement that a prayer is going to be</p> <p>17 given?</p> <p>18 A. Um, well, I will say that different times</p> <p>19 during the meeting people come and go for a lot of</p> <p>20 reasons. Okay? I can't sit here and say that I have</p> <p>21 seen anyone go for in response to the prayer preface,</p> <p>22 and I can't say that I have ever really watched to see</p> <p>23 if that occurred.</p> <p>24 Q. Are students in the audience when the prayer</p>	<p>115</p> <p>1 VIDEOGRAPHER: This deposition is</p> <p>2 ending at approximately 4:12 p.m.</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p>114</p> <p>1 is given?</p> <p>2 A. Most often.</p> <p>3 Q. Have all the prayers been Christian?</p> <p>4 A. I think you asked that earlier, and, to my</p> <p>5 knowledge, I would have to say the majority have been.</p> <p>6 Q. Do you recall any prayer in the name of</p> <p>7 Jehovah?</p> <p>8 A. No, I can't.</p> <p>9 Q. Any prayer in the name of Buddha?</p> <p>10 A. No.</p> <p>11 Q. Any prayer in the name of Allah?</p> <p>12 A. No.</p> <p>13 Q. So can you recall any prayer for any other</p> <p>14 religious deity besides Jesus or the Christian God?</p> <p>15 A. Other than the moment of silence, which would</p> <p>16 not address either faith.</p> <p>17 Q. Has anyone served on the school board who is</p> <p>18 not Christian?</p> <p>19 A. I do not know that is true. I don't make it</p> <p>20 a point of asking people their religion or beliefs,</p> <p>21 and it wouldn't have made any difference to me.</p> <p>22 MR. LENHARD: I think that's all the</p> <p>23 questions I have. Thank you very much.</p> <p>24 THE WITNESS: Thank you.</p>	<p>116</p> <p>1 CERTIFICATE</p> <p>2 I, Lorena J. Hartnett, a Notary Public and</p> <p>3 Registered Professional Reporter, do hereby certify</p> <p>4 that the witness, RICHARD COHEE, was by me first</p> <p>5 duly sworn to testify the truth, the whole truth, and</p> <p>6 nothing but the truth; that the foregoing deposition</p> <p>7 was taken at the time and place stated herein; and</p> <p>8 that the said deposition was recorded stenographically</p> <p>9 by me and then reduced to typewriting under my</p> <p>10 direction, and constitutes a true record of the</p> <p>11 testimony given by said witness.</p> <p>12 I further certify that the inspection,</p> <p>13 reading and signing of said deposition was not waived</p> <p>14 by counsel for the parties and by the witness.</p> <p>15 I further certify that I am not a relative,</p> <p>16 employee, or attorney of any of the parties or a</p> <p>17 relative or employee of either counsel, and that I am</p> <p>18 in no way interested directly or indirectly in this</p> <p>19 action.</p> <p>20 IN WITNESS WHEREOF, I have hereunto set my</p> <p>21 hand and affixed my seal of office on this 24th day of</p> <p>22 October 2006.</p> <p>23</p> <p>24 Cert. #134-RPR, Exp. 01-31-2008</p>

EXHIBIT 4

Dobrich, Marco 11/1/2006 12:55:00 PM

<p>1 IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE</p> <p>2</p> <p>3 MONA DOBRICH, et al., : CIVIL ACTION Plaintiffs, :</p> <p>4 -v- :</p> <p>5 INDIAN RIVER SCHOOL : DISTRICT, et al., : NO. 05-120-JJF Defendants. :</p> <p>7 Deposition of MARCO DOBRICH, taken before Elaine Gallagher Parrish, Registered Professional Reporter, at 1100 North Market Street, Suite 1000, Wilmington, Delaware on November 10, 2006, commencing approximately at 12:55 p.m.</p> <p>10 APPEARANCES:</p> <p>11 THOMAS J. ALLINGHAM, II, ESQ. 12 BRIAN G. LENHARD, ESQ. One Rodney Square 13 P.O. Box 636 Wilmington, Delaware 19899-0636 14 for the Plaintiffs, 15 JARROD D. SHAW, ESQ. Drinker Biddle & Reath, LLP 16 One Logan Square 18th and Cherry Streets 17 Philadelphia, Pennsylvania 19103-6996 for the Defendant.</p> <p>18 ALSO PRESENT: 19 Timothy Kearns 20 Kristhy Peguero 21 Mona Dobrich, Plaintiff 22</p> <p>23 WILCOX & FETZER 1330 King Street - Wilmington, Delaware 19801 (302)655-0477 24 www.wilfet.com</p>	<p>1 Q. What did you do to prepare for today's 2 deposition?</p> <p>3 A. Met with the lawyers a couple weeks ago.</p> <p>4 Q. I believe you said your answer was you met with 5 your attorneys to prepare for the litigation or for the 6 deposition?</p> <p>7 A. Yes.</p> <p>8 Q. Did you discuss the deposition with anyone else?</p> <p>9 A. No.</p> <p>10 Q. Okay. Did your attorney show you any documents 11 at that point?</p> <p>12 A. No.</p> <p>13 Q. Mr. Dobrich, where do you currently live?</p> <p>14 A. Georgetown, Delaware, 154 David Street.</p> <p>15 Q. That's my next question.</p> <p>16 A. Pine Grove Manor.</p> <p>17 Q. Do you live in a house there?</p> <p>18 A. Yes.</p> <p>19 Q. Do you rent the house?</p> <p>20 A. No, I live with my wife's sister.</p> <p>21 Q. Okay. Just for the record, where did you live 22 before that?</p> <p>23 A. 174 Georgetown -- Route 1, 174, Georgetown, 24 Delaware.</p>
<p>1 MARCO DOBRICH,</p> <p>2 having been first duly sworn according to law, was 3 examined and testified as follows: 4 - - -</p> <p>5 BY MR. SHAW:</p> <p>6 Q. Mr. Dobrich, I know you heard this earlier, but 7 I'll give it again pretty quickly. My name is Jarrod 8 Shaw and I represent the Defendants in this litigation. 9 I am going to ask you a bunch of questions to which 10 you'll respond. If you don't understand the question, 11 please ask me to either repeat it or rephrase it. 12 Because if you give your answer it will look on the 13 transcript as though you understood the question and 14 your answer was to that question. So I just want to 15 make sure that you're clear.</p> <p>16 A. Yes.</p> <p>17 Q. So please feel free to ask me to rephrase or to 18 repeat my question.</p> <p>19 Again, if you need to take a break at any 20 point, just let me know and we'll stop and you can take 21 a break.</p> <p>22 A. Okay.</p> <p>23 Q. Have you ever been deposed before?</p> <p>24 A. No.</p>	<p>1 Q. And how long did you live there for?</p> <p>2 A. 19 years.</p> <p>3 Q. Did you grow up in Georgetown?</p> <p>4 A. No.</p> <p>5 Q. Where did you grow up?</p> <p>6 A. Seaford, Delaware.</p> <p>7 Q. Seaford, Delaware?</p> <p>8 A. 19947 -- or 73.</p> <p>9 Q. What county is that in?</p> <p>10 A. Sussex.</p> <p>11 Q. It's in Sussex County. Is it the Indian River 12 School District?</p> <p>13 A. No.</p> <p>14 Q. No. Okay. Is your high school a rival with 15 their high school?</p> <p>16 A. No, we were with Laurel.</p> <p>17 Q. Oh, okay. So you did not live in the Indian 18 River School District until you moved into the home at 19 174 Georgetown?</p> <p>20 A. Yes.</p> <p>21 Q. Are Samantha and Alex your only children?</p> <p>22 A. Yes.</p> <p>23 Q. So is this your first marriage?</p> <p>24 A. Yes.</p>

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<p>9</p> <p>1 A. Before this? '04 or altogether?</p> <p>2 Q. I'll rephrase. Right now I'm speaking before</p> <p>3 June 15th, 2004, do you know approximately how many</p> <p>4 School Board meetings you attended?</p> <p>5 A. Six or seven.</p> <p>6 Q. Six or seven. Was Mrs. Dobrich with you at all</p> <p>7 those meetings?</p> <p>8 A. Not at all of -- not at all of them.</p> <p>9 Q. Okay. Were Alex and Samantha or Samantha with</p> <p>10 you at any of those meetings?</p> <p>11 A. Maybe one or two.</p> <p>12 Q. Let me break it down. Was Alex at one or two?</p> <p>13 A. Yes.</p> <p>14 Q. And then Samantha was maybe at one or two?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Did the School Board offer a prayer at</p> <p>17 any of those meetings?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Do you remember what that prayer was?</p> <p>20 A. What they said?</p> <p>21 Q. Yeah. If you could remember, was it in Jesus's</p> <p>22 name?</p> <p>23 A. Most of them were. Probably all of them.</p> <p>24 Q. Is it your recollection that all of them were or</p>	<p>11</p> <p>1 straight at that meeting?</p> <p>2 A. No.</p> <p>3 Q. Why did you bow your head at the meeting?</p> <p>4 A. Feel like I was obligated because they said to,</p> <p>5 and everybody around was doing it.</p> <p>6 Q. Okay. Mr. Dobrich, would you have a problem</p> <p>7 with nondenominational prayer at the school or prayer</p> <p>8 meetings?</p> <p>9 MR. ALLINGHAM: Object to the form of the</p> <p>10 question. You may answer it.</p> <p>11 THE WITNESS: As long as they don't say</p> <p>12 within, you know, Jesus's name.</p> <p>13 BY MR. SHAW:</p> <p>14 Q. Would you be okay if they said in God's name?</p> <p>15 MR. ALLINGHAM: Object to the form of the</p> <p>16 question.</p> <p>17 BY MR. SHAW:</p> <p>18 Q. Let me rephrase. Would you be okay if the</p> <p>19 School Board members said in God's name?</p> <p>20 MR. ALLINGHAM: Object to the form of the</p> <p>21 question.</p> <p>22 THE WITNESS: Yes, I would.</p> <p>23 BY MR. SHAW:</p> <p>24 Q. Okay. Why is it okay if the Board members said</p>
<p>10</p> <p>1 most of them were?</p> <p>2 A. I would say all.</p> <p>3 Q. Did they ask you -- did the School Board ask you</p> <p>4 -- or let me rephrase.</p> <p>5 Did the School Board ask the audience</p> <p>6 members to bow their head before the prayer was given?</p> <p>7 A. Yes.</p> <p>8 Q. At all of the meetings?</p> <p>9 A. Yes.</p> <p>10 Q. Did you bow your head?</p> <p>11 A. Yes.</p> <p>12 Q. Do you know if -- you testified that Alex was</p> <p>13 with you at one or two of these meetings?</p> <p>14 A. Yes.</p> <p>15 Q. Did Alex also bow his head?</p> <p>16 A. He kept his head straight ahead.</p> <p>17 Q. We can't take the hand motions down on the</p> <p>18 record.</p> <p>19 A. Straight. I mean maybe at one he did straight</p> <p>20 but he probably put his head down at one -- the other</p> <p>21 one.</p> <p>22 Q. Okay. Did Samantha bow her head, do you know?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Did you ask Alex why he kept his head</p>	<p>12</p> <p>1 it in God's name but not okay if they say in Jesus's</p> <p>2 name?</p> <p>3 MR. ALLINGHAM: Object to the form of the</p> <p>4 question.</p> <p>5 BY MR. SHAW:</p> <p>6 Q. In your mind?</p> <p>7 A. In my mind I think they should do it before</p> <p>8 anybody is in there. They should do it, you know, in</p> <p>9 the back room before they come in there to start the</p> <p>10 Board meeting.</p> <p>11 Q. Okay. Is it okay if they say in God's name at</p> <p>12 the meeting?</p> <p>13 MR. ALLINGHAM: Object to the form.</p> <p>14 MR. SHAW: In your mind.</p> <p>15 MR. ALLINGHAM: I object to the form of the</p> <p>16 question.</p> <p>17 THE WITNESS: I don't think they should say</p> <p>18 anything really.</p> <p>19 BY MR. SHAW:</p> <p>20 Q. Mr. Dobrich, I am going to show you what's been</p> <p>21 previously marked as plaintiff's Exhibit 9. I think you</p> <p>22 have it in front of you. I'll represent to you that</p> <p>23 this is the Board prayer at regular Board meetings.</p> <p>24 It's designated by BDA-1. Have you ever seen this</p>